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ABSTRACT

This is the final report and critique which investigated the law school admissions process, and especially the role of the Law School Admission Test (LSAT) within that process, for possible bias against minority applicants. The study involved the reanalysis of existing data. Results show that current admission policies unfairly limit the enrollment of minority applicants. The report begins by reviewing the Bakke decision. It then examines each of the components of the Admissions Index which is a weighted combination of the undergraduate grade point average (UGPA) and the LSAT score. Overall, the UGPA is less biased against minorities than is the LSAT. The report presents evidence that shows the differential effect of adding LSAT scores to UGPA's for minorities vs. whites. The author examines items from the "Law School Admission Bulletin and LSAT Preparation Material" which is commonly used for practice by potential test takers. Factors inherent in the LSAT which might be contributing to low test performance for minorities are explained. Finally the Thorndike and Cole models for admissions decisions are evaluated. The report's recommendations include: adjusting the LSAT scores of minority applicants in recognition of possible cultural bias in the test; evaluating LSAT scores on an individual basis through extensive review of applicant files; separating evaluations for minority applicants; and disregarding LSAT scores. Without exception, reviewers, who critiqued the study agreed with the author's concern for the rethinking of current admissions policies. However, many reviewers pointed out problems with the methodology used, with the validity of the report's conclusions, and with the final set of recommendations. (Author/RM)

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A STATEMENT FROM THE
NATIONAL INSTITUTE OF EDUCATION
"AN INVESTIGATION INTO THE VALIDITY AND CULTURAL BIAS OF THE LAW SCHOOL ADMISSION TEST"

Introduction

This monograph is the final report submitted to NIE by Mr. David White, National Conference of Black Lawyers, as part of a one-year grant award (NIE-G-79-0079) to study possible biases against minorities in law school admissions policies and practices. Parts of the study, including support for a conference and publication of the results, were funded by a grant from the Spencer Foundation.

NIE has prepared the following statement based on extensive reviews which were obtained according to the procedures outlined in the next section. This statement is being made by NIE because of the public interest in the general topic area plus the controversial nature of the conclusions and recommendations in the report.

Review Process

This report has received extensive reviews by researchers and policy makers during the conduct of the study as well as after the first draft report was received by NIE. Throughout the conduct of the study, Mr. White was guided by a six-member multi-disciplinary advisory panel which commented on technical and policy matters. In addition, during the course of the study two conferences were conducted to provide feedback on the draft report. The first conference was held in Berkeley, California, where 60 participants heard and commented on the draft. This conference was supported by the Spencer Foundation; a report of the proceedings of that conference was prepared for the foundation and will be published in the near future. The second conference was held at NIE where several NIE staff people heard Mr. White's presentation and commented on various aspects of

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the draft report. Mr. White has indicated that he considered comments from both of these conferences in finishing the final report.

Anticipating wide-spread interest in his study and recognizing the controversial nature of the report's findings, NIE initiated an external review of the final report. Seven outside reviewers agreed to evaluate final the report. These reviewers represented the major audiences for the report: the test publisher, (Educational Testing Service) the Law School Admission Council, researchers, attorneys, psychometricians, and law school admissions officers. Reviewers were asked to comment on three general themes: the research methodology, the validity of the conclusions based on the evidence presented, and the appropriateness of recommendations for changes in law school admissions procedures. These comments form the basis for this statement.

Overview of the Report

The purpose of the study was to investigate the law school admissions process, and especially the role of the Law School Admission Test (LSAT) within that process, for possible bias against minority applicants. The original idea of the proposal was suggested by the recent Bakke vs Regents of the University of California decision which called for fairer admissions policies in higher education. The proposal requested support primarily for reanalysis of existing data. The award was made through an unsolicited grants competition.

The report is divided into seven sections, plus an extensive appendix of annotated reference notes. The report begins with a look at each of the components of the Admissions Index which is a weighted combination of undergraduate grade point average (UGPA) and the (LSAT) test score. Section I reviews the Bakke decision, Section 2 discusses the problems of imperfect predictability of law school grades using the Admissions Index, especially for minorities. Then in Sections 3 and 4 the report discusses each of the two components of the Index: college grades and the LSAT. When reviewing UGPA differences between minorities and whites, the report states that, "The general content of college grades as an indicator of a variety of personal and academic factors is the same for grades earned by students or by minority students." Overall, the author concludes that the UGPA is less biased against minorities than is the LSAT, in spite of differences between the grading practices of traditionally-black colleges and those of majority colleges.

In the next section, the report presents evidence that shows the differential effect of adding LSAT scores to UGPA's for minorities vs. whites. After presenting this data, which was taken from a Law School Admission Council report, the report attempts to explain what factors inherent in the LSAT might be contributing to low test performance for minorities. Hampered by an inability to receive copies of the test itself (the report was completed before Truth-in Testing legislation was enacted in New York which mandated release of some forms of the LSAT), the author restricted his analysis to items listed in the Law School Admisssion Bulletin and LSAT Preparation Material (1979-80) which is commonly used for practice by potential test takers. The report lists several factors that might affect the performance of minority test takers, including; severe time limits or content which is insensitive to minority group traditions and ignorant of minority community values; content which reinforces prejudicial stereotypes about minority group members; and content which shows ignorance of the history of black culture. Here the analysis is based largely on the author's own analytical thinking; he examines item after item in the Bulletin and suggests how the item might be confusing, misleading or insulting to minority test takers. He expands his arguement beyond the identification of potentially biased items; he theorizes that once a minority applicant encounters an offensive or insulting item, his or her performance on the rest of the test will necessarily suffer. The report also presents evidence that performance on the LSAT is more related to extraneous variables, such as race, family income and age, than it is to

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performance in law school or success as a lawyer.

In Section 5 Mr. White examines what happens when UGPA and LSAT scores are combined into a single number for use in admissions decisions. He discussess at length the problems and fallacies associated with using a weighted sum: Problems such as overprediction, a faulty criterion variable, pendulum effects, overprediction for low scores, and the effects of creeping grade inflation.

~~Section 6~~ examines problems with the use of first year law school grades as the ultimate criterion for measuring the validity of the LSAT. The report concludes that this criterion is unrelated to future success as a lawyer as well as to general success in law school. The report suggests that indicators used in admissions decisions should be able to predict these longer-term outcomes.

~~The~~ Final ~~section consists of~~ a discussion of the Thorndike'~~s~~ and Cole'~~s~~ models for ~~of~~ admissions decisions is presented the author's own evaluation of the adequancy of these models, and recommendations for further consideration in trying to establish a race-fair admissions policy for law schools. ~~His~~ Recommendations include: 1) adjusting the LSAT scores of minority applicants in recognition of possible cultural bias in the test; 2) evaluating LSAT scores on an individual basis through extensive review of applicant files; 3) separate evaluations of minority and majority applicants; and 4) disregarding LSAT scores. The report does not advocate one policy over another, stating "No single evaluation process or definition of fairness can command paramount legitimacy (p. 131), " as long as the goal remains to remove unfairness against minority applicants.

Highlights of Reviewers Comments

Without exception, reviewers agreed with the basic goal of the report--to promote adequate representation of minorities in law schools--and they agreed with the author's concern for a rethinking of current admissions policies which appear to unfairly limit the enrollment of minority applicants. However, many reviewers pointed out problems with the methodology used, with the validity of the report's conclusions, and with the final set of recommendations. The next three sections will deal with each of these problems in turn, but first we'll examine what reviewers pointed out as its most positive aspects.

Several reviewers indicated that the report would be valuable for admissions officers to read and think about. For example, most reviewers cited the value of the report as an intitial step in sensitizing admissions officials to real as well as potential problems in current admissions policies, especially those that rely heavily on LSAT scores. Other reviewers commented very positively on the identification of new areas for further research. For example, the report suggests that several motivational factors may have adverse impact on minority test-takers. In another example, the author speculates that when a student encounters a troublesome, offensive or culturally biased reading passage or test question, the rest of his/her performance on the test will be adversely affected. Although neither of these ideas were tested empirically, in the study, both are suggestive of areas for further research.

As one reviewer put it:

> It is an extraordinarily useful report. It provides a clear, sensible, well-developed discussion of multiple sources of possible cultural bias in the LSAT, UGPA's and first year law school grades themselves. The paper also provides specific recommendations concerning changes in law school admissions policies as they effect minority applicants. While many persons in measurement and/or law may not agree with all of the assumptions, interpretations, and conclusions of this report, the paper should be a significant catalyst both for discussion and action concerning the development of new law school admission policies. (Reviewer's emphasis)

Despite these generally positive statements concerning the goal of the report, its potential role in stimulating new research, and its suggestions for new admissions policies, most reviewers heavily criticized the report for its methodological approach, the validity of its conclusions, and/or its recommendations. The problems are discussed in the three sections below.

Methods

The methodological approach used in this study is one of "advocate" or "advocacy" research. This type of research is designed to convince the reader or to advocate a certain position on policy. The researcher begins with a statement, a belief, or a position, and then searches for existing data or produces a new data that supports the statement, belief or position. The ulimate goal of the research is to convince others that the researcher's view is a valid one. Convincing the reader rests on how well the researcher logically presents his evidence and how well the researcher discusses and then refutes alternative or contrary explanations. This method is very similar to the way a lawyer builds a brief.

Since, this report follows the advocacy research method, most sections begin with a statement on a position, followed by examples (anecdotes, research data, or expert opinion) which supports the initial position. Reviewers noted that the study seemed like - an "advocacy statement." Another called it "more of a brief for the plaintiff than an inquiry into the facts." Some reviewers found the value-laden terms used in the report, which are common in "advocacy research, to be offensive and distracting.

Some reviewers pointed out that the report made a few incorrect statistical interpretations and ignored common statistical properties of prediction equations. In particular, reviewers noted problems in statistics involving the weighting and regression formulas used to combine LSAT scores and UGPA into a single admissions index.

Validity of Conclusions

As pointed out above, the methodology chosen for this report is a deductive one: A position is taken and then an examples are given in support of that position. This particular approach was most troublesome to reviewers--they often stated that the conclusions were not supportable from the evidence given. One reviewer indicated that "Unfortunately, significant sections of the analysis and many of the conclusions included in the study have serious flaws." When reviewers cited specific cases where conclusions seemed overstated or erroneous, they often indicated that the conclusion had gone well beyond the data presented or had been based on some incorrect assumptions about causes and their potential effects.

Several reviewers pointed out that the studies cited in the report were selectively chosen, and in a few cases, contrary evidence had been ignored. One reviewer faulted the report for ignoring a large body of research conducted by the Law School Admission Council which demonstrates a statistically significant relationship between LSAT scores and law school academic performance and which shows that the LSAT predicts this performance for minorities as well or better than it does for whites. In addition, reviewers noted that in many cases statements were supported only by rationalization, persuasive argument, expert opinion, or the author's own analysis--with no supporting data and without, presenting other alternatives.

Several reviewers also noted that the author lept from his own analysis of items taken from the Bulletin to a statement that the LSAT is culturally biased. Such a conclusion rests on several assumptions, many of which reviewers disagreed with: 1) that that author's own analysis adequately represents how minority students would preform if given that item; 2) that the analysis of other experts would agree with his own; 3) that only minorities would be affected by faulty items; 4) that the items in the Bulletin are equivalent and representative of those given in the test; and 5) that the presence of biased items within a test makes the test itself biased. On this later point one reviewer pointed out that current research indicates that "item bias is a matter of degree rather than yes or no, and test bias and item bias are not equivalent. It is possible for some test items to be biased against one group, other items against another, and so on, so that in the end the total result of the item biases balance out to provide an unbiased test score." Another reviewer indicated that although White's analysis of the items appears well-reasoned, "Never-the-less, others will surely disagree with the interpretations. It would seem his critique might have had more face validity if done by a panel representing a variety of minority groups."

The report was also faulted for not adequately presenting alternative explanations. For example, on the topic of item bias one reviewer noted that the author assumes that differences between black and white test performance is *prima facie* evidence that the test is culturally biased; he does not explore the alternative hypothesis that blacks as a group suffer from unequal educational, social and economic opportunities--all of which correlate with low test scores--and which may be reflected by poor test performance.

There were other specific criticisms of the conclusions for example, one reviewer complained that the discussion of the potential effects of a speeded test on minority test performance was extraneous and should have been omitted, especially since the report finally concluded that this point was really moot. Another reviewer faulted the author's criticism of using first year law school grades as the predicator, pointing out that other criteria such as "success as a lawyer" are much harder to define and quantify. Other reviewers pointed out that many of the "problems" of the LSAT—its modest predictive value, the pendulum effect of using a cut-off score to admit applicants, and overprediction for low-scoring test takers—are not unique to the LSAT but in fact are artifacts of the statistical procedures used in prediction equations, no matter what test is used.

Recommendations

Most reviewers reacted favorably to the proposed alternative admissions policies which might be more defensible than current policies from a political as well as legal perspective. A few reviewers, however, felt that the recommendations were "not novel" and suffered from some of the same flaws as the Thorndike and Cole models which were criticized at length in the report. One reviewer noted, for example, that none of the recommendations dealt adequately with the problem of determining "acceptable standards" or decision rules (e.g., cut-off scores) for admitting applicants.

One reviewer pointed out that all such predictive models must be validated against the entire applicant pool, not just those admitted, a procedure which tends to reduce estimates of predictive validity. However, this same reviewer note's that this is exceedingly difficult to do: "If it were possible to determine the proportion of white black applicants who would reach some specified standard of success if admitted, one could make a case for admitting students from the two groups in those proportions. (reviewer's emphasis)."

In the final analysis, most reviewers agreed that problems in admissions policies are largely social ones, not psychometric ones; thus the remedies should be based largely on social values and the need for fairness. Several reviewers suggested that new policies would evolve out of a merger of social values plus a review of individual qualifications. Test scores might form part of the picture of an individual applicants; qualifications, but probably only a small part, and perhaps only for use in some specific cases.

NIE's Summary Position Statement

As indicated in the grant proposal, this report was to "contain a thorough review and evaluation of research data, combined with legal analysis of the data in light of Bakke and subsequent legal developments (p. 23)." Although the structure of the final report was not specified, it was to be "designed to be of immediate practical use to law school admission officials (p. 23)." NIE has determined that this report is acceptable and meets the requirements specified in the proposal.

NIE recognizes that this study follows the style of advocate research - a position is taken and the researcher gathers evidence in support of that particular view. The author cites example after example to support the statement that use of the LSAT and the Admissions Index in law school admissions decisions has a detrimental impact on minority applicants and their chances for enrollment. The evidence is selectively chosen, based solely on the author's judgement, and is used persuasively to make his points. Advocacy research is legitimate and informs other researches and policy makers. It is also a valuable step toward further research. However, in the case of this study, not all reviewers found the evidence to be incontrovertible.

Quite the contrary, many pointed out that the report ignores conflicting evidence and does not present alternative explanations for the evidence cited. At best the report has suggested some plausible explanations for the low instance of minority enrollment in law school. It may be true that present admissions policies are biased against blacks, the poor, and other minorities (or women); it may be true that once a test taker encounters an offensive item, his/her performance suffers; it may be true that the LSAT has culturally unfair items; and soon. And in fact, the author cites good reasons why these statements might be true. However, most reviewers found the author's arguments unconvincing; they could cite counter examples or could think of alternative explanations which the report did not present. Few reviewers were completely convinced of his findings.

The value of this study is that it does suggest the need for further research in this area, as many reviewers pointed out. It may not convince all readers, but it certainly causes one to think about what evidence does exist, both pro and con, on the present use of the LSAT. It also contributes to the generation of new hypotheses. If for no other reason, this report is to be valued for its contribution to other researchers who wish to explore law school admissions policies and practices. In this sense the report fulfilled one of its primary objectives: to present data for review by other scholars pursuing related re-research.

Towards a Diversified Legal Profession

An Inquiry into the
Law School Admission Test,
Grade Inflation, and
Current Admissions Policies

Edited by

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NATIONAL CONFERENCE OF BLACK LAWYERS

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Towards a Diversified Legal Profession

Preface

This volume charts a road not taken in the famous *Bakke* case. The lawsuit resulted in a record number of briefs before the U.S. Supreme Court and generated more national attention than any litigation about racial discrimination since *Brown v. Board of Education*. The petitioner, the University of California, suggested four purposes served by the race-conscious admissions program at Davis Medical School. Only one of those purposes, the quest by an academic institution for a "diverse student body" was approved by a majority of the Justices. This volume explores what Mr. Justice Powell described as: "a fifth purpose, one which petitioner does not articulate: fair appraisal of each individual's academic promise in the light of some cultural bias in grading or testing procedures."

The contributors to the volume do not belabor litigation strategies or merely complete a dormant historical record. The issue of cultural bias in grading or testing procedures must be explored to estimate the extent to which the goal of achieving actual diversity within law schools and the legal profession can be achieved. There remains a danger that subtle but demonstrable discrimination against cultural minorities will continue despite good faith efforts to achieve diversity unless bias in tests and grades is recognized and alleviated. Testing bias does more than diminish the chances of individual members of minority groups to pursue a professional career in law or medicine. The threat posed by *unacknowledged cultural bias affects all minority group* members, since artificially low measures of the academic worth of the best educated members of cultural minorities perpetuates the myth disavowed in *Brown* that certain races are inferior to others. The myth infects all who ignore cultural bias and choose instead to measure relative mental abilities according to a single test which produces scores resulting in labels of "disadvantage". The road not taken in *Bakke*, therefore, can lead not merely to more minority doctors, nor merely to better health care for those they would have treated, but ultimately to a nation less consumed by the mental illness known as racial prejudice.

President Walter J. Leonard of Fisk University begins the volume with a reminder that this is not the first time America has embarked on a course aimed at achieving true freedom for previously oppressed minorities. The era following the Civil War began with ambitious constitutional and legislative enactments clearly signaling a new order. The era closed with crippling Supreme Court decisions reflecting a popular impression that black people were moving too fast, that they had gone too far. The *Brown* decision precipitated the recent civil rights era. Executive orders and legislation established affirmative action goals. Initial gains were made in higher education. For example, the number of minority law students rose from fewer than 800 across the nation in 1964-65 to 7,000 a decade later. Yet, such visible gains seemed magnified in many eyes which overlooked the fact that for every minority law student enrolled five new law school seats were added for white students. The *DeFunis* case reflected a popular perception that blacks and other minorities had again gone too far too fast. Although the Supreme Court declared the suit moot, a national perception of "reverse discrimination" was reinforced. The *Bakke* case implicitly accepted the notion that "reverse discrimination" had occurred. The Court endorsed limited race-conscious admissions in principle but rejected the actual plan followed at Davis Medical School. Writing in dissent, Mr. Justice Marshall recounted the history of affirmative action from the Emancipation Proclamation, through the *Brown* case in which he had argued for the plaintiff, and culminating in the rejection of the Davis program in *Bakke*; he lamented: "I fear we have come full circle."

One way of breaking this circle of affirmative action followed by new forms of discrimination is to recognize successes achieved through race-conscious programs. The Council on Legal Education Opportunity (CLEO) is the primary national program designed to increase the enrollment in law schools of students from economically and educationally disadvantaged backgrounds. Since 1968, some 2,600 persons have met the program's challenge by compiling impressive records of academic and professional achievement. This volume includes the first publicly reported results of a survey of CLEO Fellows, compiled by Wade J. Henderson and Linda Flores, the Executive and Associate Directors of CLEO. Their report includes a variety of compilations of survey responses showing the academic success achieved by the Fellows, including cross-tabulations of the six-week summer CLEO Institute attended and first-year law school performance, and the law school attended and bar passage information. Although the survey data is not a complete accounting of all CLEO Fellows due to difficulty in locating their current addresses and some reluctance by law schools to release personal data, there is a remarkable consistency of results from the range of summer institutes and law schools attended. Particularly remarkable is the fact that the Fellows were consciously chosen because their LSAT scores were sufficiently low that the students would probably not have been actively recruited, admitted and subsidized by law schools in the absence of CLEO support. The typical CLEO Fellow scored between 350 and 525 on the LSAT. Compared to the entering classes in 1975 at 128 law schools which all had mean LSAT scores of 510 or above, the CLEO Fellows included in the survey report had an average LSAT of 422. Thus, the success of CLEO lies not only in the increased representation of minority group members in law school, but also in the demonstration that students from disadvantaged backgrounds can succeed in legal studies despite significantly lower LSAT scores. The success of CLEO extends beyond law school, however, since the survey also shows many of the Fellows pursuing careers in a variety of legal settings, fulfilling a larger national purpose of integrating the bar and providing a more representative profession for the benefit of those previously lacking legal services. The task of CLEO is to continue its accomplishments; the task of the remainder of this volume is to provide a research framework for understanding the success of CLEO and of all minority law students, most of whom did not participate in CLEO. This understanding will shed light both on the prospects for future increases in minority participation in law school and on the reasons for reassessing the prevailing law school admissions prerequisites.

The bulk of this volume was prepared in the wake of the *Bakke* litigation as a report to the National Institute of Education on the validity and cultural bias of the LSAT. The report's major benchmark for comparison is a candidate's undergraduate grade point average (UGPA), traditionally a major factor in evaluating applicants. The UGPA stands both as a benchmark for research, indicating the relative discriminatory impact of UGPA and LSAT against minority applicants and the relative predictive validity of the two, and as a benchmark for admissions officials, indicating prior academic accomplishments in an accepted and understandable fashion. Since both UGPA and LSAT will continue to be used during the admissions process, the report seeks to learn whether placing different emphasis on LSAT scores compared to UGPA significantly affects admission opportunities for minority applicants or significantly alters the risk that ultimate academic failures will be admitted to law school. There is a danger that undue emphasis on the LSAT will result in rejection of minority applicants with excellent college grades and yet will not yield more valid prediction of academic success in law school. If this is occurring, prejudice is being perpetuated by test results and minority applicants who could otherwise dispel unfortunate stereotypes are being denied admission.

Formulas which combine UGPA and LSAT scores into an Admissions Index for each applicant fail to explain most of the eventual variance in law school grades among first year students. The most effective prediction reported accounts for approximately 36% of the variance in law school grades. This low predictive power is often associated with the fact that there is little varition among the law students on their LSAT scores, since strong competition for law school places has raised the average scores of students far above what would have sufficed for admission a generation ago. Yet computations made in this report indicate that the major difficulty with prediction formulas is the fact that there is a negative correlation between LSAT and UGPA in the student bodies at most law schools. This means that many applicants with low scores or grades were nonetheless admitted because they had unusually high grades or scores to produce a relatively high Admissions Index. Those law schools which have the greatest discrepancies between UGPA and LSAT in their student bodies also exhibit the lowest predictive validities for their admission formulas. Thus the perplexing process of evaluting an applicant's file wth discrepancies between grades and test scores both creates anxiety for admissions officials and lowers the general predictive value of the formula. Since applicants often have discrepancies between their grades and test scores, placing different weight on LSAT compared to UGPA in formulas would result in the admission of different people.

The general problem of discrepant predictors becomes a matter of significant social consequence when data on minority applicants is compared to data on nonminority applicants. For white applicants, good grades or high LSAT scores are approximately equally difficult to achieve. Placing different weight on LSAT scores will result in the admission of different individual white applicants, but the overall number of whites accepted would not differ appreciably. Yet black applicants with excellent college grades are much more prevalent than are black applicants with high LSAT scores. Thus, placing more weight on LSAT scores in comparison with UGPA will reorder black applicants, but will also greatly reduce the total number of blacks accepted. For example, requiring a 600 LSAT score reduces by half the number of white applicants with a 3.25 UGPA, but literally decimates the black applicants with a 3.25. When the

Admissions Indices are compared in the typical admissions process, top black college graduates are passed over in favor of white applicants with lower college grades but higher LSAT scores. If black applicants are nonetheless accepted to achieve diversity in the student body, some will argue that "reverse discrimination" has occurred and that academic standards are being lowered. The appearance of preference for minority applicants grows as the general emphasis on LSAT scores increases. Among black, chicano and white applicants to law school in 1976 with equal college grades, white applicants were accepted more often. The national debate over "reverse discrimination favoring less qualified minority applicants" had obscured the pattern of results which occurred among applicants with equal college grades.

When the discriminatory impact of LSAT scores on minority applicants with high UGPAs is documented, the most common concern expressed is discomfort with sole reliance on grades as a benchmark. This concern is usually couched in terms of grade inflation or college quality. It is true that the average grade earned in college is higher than a decade ago, but it is also true that older candidates score considerably lower on the LSAT. Thus using the LSAT to adjust for true grade inflation over the decade does not lessen the problem but worsens it. A related concern is the supposed unreliability of college grades, since they are earned in different courses taught by different professors; this unreliability in turn lowers the predictive value of UGPA. Yet the scant research bearing on this concern shows that three years of college grades are exactly as reliable as the LSAT. Additional predictive power cannot be gained by focusing on an applicant's grades in a major or on other transcript information. In fact, UGPA is a more valid predictor of law school grades than even scores on the Graduate Record Examination advanced tests in special subjects. Additional concern reflects the generally increased interest in law school which has made the applicant pool extremely competitive, with most applicants presently strong college records. Admissions officials feel understandable discomfort in making decisions on the basis of small differences in UGPA among a group of candidates who have all excelled in college. Adding the LSAT score to create an Index number does not alleviate the problem, however, since small differences on the LSAT can often determine an admissions decision and the LSAT does not necessarily rank applicants in the same order as UGPA does. Moreover, none of these issues of grade inflation, grade unreliability, and the lack of differentiation among candidates' grades actually confronts the problem of why minority applicants have a much easier time, on average, earning good grades than high test scores. Each of the three concerns should be equally applicable to grades earned by applicants of all cultural backgrounds.

One remaining claim could devalue the college records of some minority applicants if it were proven. This claim involves the differing reputations which various colleges enjoy. It is theoretically possible that minority applicants have earned undeservedly high grades at colleges with deservedly low reputations. the general worry that grades earned at one college cannot be compared with those earned at another has prompted several different attempts to formulate grade adjustment schemes in which college quality would be considered in developing formulas combining LSAT and UGPA. The most systematic scheme, developed and later discarded by the Law School Admission Council, involved adding the mean LSAT earned by graduates of an applicant's college to each applicant's Index. The scheme meant virtual exclusion for applicants from colleges in which graduates typically earn low LSAT scores, yet produced no increase in predictive validity for the Index. This finding is important, since disparaging assumptions about a college's quality are sometimes implicity associated with impressions of the test scores typically earned by a college's graduates. It is particularly important for black candidates who have graduated from traditionally and predominantly black colleges or from other institutions often viewed as less prestigious. Since grade adjustment systems do not improve the predictive validity of UGPA and LSAT, further inquiry into the grading patterns of various colleges is necessary. One study found that colleges with higher average LSAT scores among graduates also tended to have higher average

UGPAs among those graduates. It is plausible, therefore, that just as law school faculties are conscious of differences in college quality, so too the faculties of various colleges are sensitive to different student bodies and tend to reward students from higher prestige institutions with higher average grades and to award lower grades at less prestigious colleges. While faculties may not perfectly calibrate grades earned at various colleges, the general trend does not support assumptions that minority students have earned unusually inflated grades at easy colleges. Instead, a minority student, or any student for that matter, who earns good grades at a low prestige college has probably beaten harder odds.

If minority students do not seem to earn systematically higher grades than white students in college, then the other obvious explanation for their systematically lower LSAT scores involves the test itself. Yet inquiry into test bias is often overlooked in debates over race-conscious admissions, as the *Bakke* litigation demonstrates. Often the only two positions considered are theories of genetic inheritance of intelligence or hypotheses that low test scores reflect environmental factors such as inferior educational opportunities, often resulting from state-enforced segregation. While most would readily disavow belief in a theory that attributes low test scores to genetic inferiority, it is much more difficult to disassociate low test scores among certain cultural groups from the obvious discrimination which has been imposed upon members of those groups. Yet if we are to explain the persistence of low test scores despite high college grades, we must consider the possibility that low test results do not just reflect academic achievements but rather constitute an independent barrier to minority group advancement. If we fail to consider the possibility of test bias, we will be left with a task of focusing exclusively on education programs in high school and college, and we may thereby fail to reap the full benefits of successful educational programs when test scores do not also rise. The assertion that a test is biased is not an excuse for poor academic opportunities or achievement, but rather is an explanation for the joint phenomenon of excellent college accomplishments and persistently low test scores among minority students.

There is no definitive research which clearly demonstrates the source, size and significance of cultural bias in tests. The present report has also been limited by the unavailability of actual questions and tests for examination. Analysis of the LSAT has been limited to a review of research related to the problem of cultural bias but not directly dispositive of the issue, and to an examination of sample LSAT questions published in materials distributed to test candidates. Since the report was completed, New York State has enacted a law which requires publication of college, graduate or professional school admissions tests given in New York after the test scores are reported to candidates. There is now a growing volume of actual LSAT questions against which the hypotheses developed in the report can be tested. These released forms cannot answer all questions raised in the report, since questions used for equating or for pretesting purposes need not be released. The report raises the possibility that pretest questions may be defective in ways that unnecessarily confuse candidates or create lowered evaluations of the test's quality by their presence. This theory cannot be fully explored despite enforcement of the New York law. The report also raises the possibility that the well-known history of poor performance by minority candidates on the LSAT may itself now create a source of bias, inducing anxiety and an expectation of poor performance among minority candidates that results in a self-fulfilling prophesy. Examination of the test cannot answer this issue, although it is possible that widespread review of the test could reassure minority candidates that there is no bias and eventually lead to a rising pattern of scores.

Certain features of the LSAT may affect its validity for all candidates, yet contribute to discriminatory results for minority students insofar as they score relatively low on the test. Among these factors is the general speed factor of the testing situation, which has been shown to create a trade-off between answering all questions quickly or answering most questions carefully. Insofar as certain groups of students answer the test more slowly or are more reluctant to guess, speed becomes an element of bias as well as an impediment to validity. Likewise, the presence of question types on the LSAT that seem unrelated to law school may affect motivation, or may depress the scores of candidates who lack the test skill but not the law school skills. In particular, the presence of Quantitative Comparison questions on a test for law students may be inappropriate and the multiple-choice format in the Principles and Cases section may penalize candidates who see more than one side to issues—a highly prized skill in law school. Finally, some sections of the test may be susceptible to coaching. Research by the Educational Testing Service has shown that the Quantitative Comparison section is coachable and recent analysis of actual forms of the Practical Judgment section confirm rumors emanating from coaching schools that many items can be correctly answered without reading the lengthy passage preceding the questions. Insofar as any candidate believes the Law School Admission Council's statement that "There is no evidence that taking cram courses or studying review books gives any advantage that cannot be attained by conscientious study of the sample questions and test contained in this *Booklet*" and therefore fails to take advantage of whatever benefits coaching can offer, unfair comparisons on the basis of test scores will result. Since these courses are typically quite costly, those who are unable to afford the tuition may be denied real benefits regardless of whether individual students actually believe coaching to be effective. The cost of coaching can be expected to harm those of limited financial means who may nevertheless have compiled excellent college records.

An interesting aspect of reviewing sample LSAT questions was identifying questions which affect minority candidates, particularly blacks, differently than other candidates. While the final list of 13 categories in the report does include one question involving a Spanish-speaking community, the report cannot claim to have identified all potentially biased questions simply because not all cultural groups were included in the review process. This should be elementary, but there are those who assume that bias will be obvious to any sensitive individual. Only actual experience reviewing questions can dispel such a notion, but at least the need for diversity among reviewers can be presently acknowledged. Similarly, although several question reviewers were women, no systematic effort was made to identify potentially sex-biased questions. Instead, the prevalence of questions which could affect black candidates or candidates with low incomes should suggest the plausibility that other groups would also identify troubling items. At the same time, it must be understood that not all black candidates will find all of the questions reviewed in the report equally troubling.

It is important to note a common element in the analysis which affects both the likelihood of continuing unintentional bias in the test and the need to confront the possibility of bias in selecting a student body with healthy diversity. This common biasing element can be called "perspective" and is particularly important in screening for members of the legal profession. When a hypothetical lawsuit is described there are necessarily two parties. It is often true that some candidates will be likely to identify with one or another of the parties and that this identification will affect the probabilities of selecting the desired answer to the multiple-choice question. Similarly, when a logical reasoning question is posed, various groups may approach the question with various sets of values, assumptions and beliefs, yet only one collection of value, assumption and belief is likely to lead to the desired answer. Insofar as particular subgroups in the population are consistently disadvantaged on the test by diverse perspectives, the scores among members of that groups will be artifically low. This danger is greatest when that subgroup is itself a minority, since the majority of candidates will approach the question from a similar perspective which is also shaped by the majority's experiences. The fact that the process works statistically and heretofore secretly on the LSAT does not diminish the discriminatory results. Yet it is not necessary to attribute evil motives to those who develop or norm the LSAT to recognize that the process of cultural bias against cultural minorities is occurring. Review of actual LSAT questions merely demonstrates the real possibility that bias exists; review does not necessarily affort a remedy. As will be discussed, more immediate remedies involve the evaluation of

LSAT scores of minority candidates rather than revamping of the LSAT.

Once it is acknowledged that overemphasis on LSAT scores during the admissions process will affect the admission opportunities of minority candidates for reasons unrelated to their college accomplishments, the question remains whether an emphasis on LSAT scores is nonetheless justified because of superior predictive validity. This is an important question for 1981, since the validity studies which have been prepared for law schools since 1976 when the *Bakke* case gained national attention have apparently encouraged law schools to place ever greater weight on the LSAT compared to UGPA in each succeeding year. Since the suggested formulas are developed after complicated statistical procedures, it is understandable that the results are interpreted as rational, defensible formula weights. Yet further examination reveals that the weights assigned in one year are largely a reflection of the weights assigned in previous years as well as of the admissions decisions made in previous years. Unfortunately, the general tendency may be to create instability from year to year in the process. One major statistical problem, labeled the "pendulum effect" in the report, reflects the fact that a school which decides to place great weight on LSAT in one year and little weight on UGPA will probably admit a student body with little variation in LSAT scores and greater variation in UGPAs. A validity study conducted on that class will probably show UGPA to be a more valid predictor than LSAT simply because there was more variation in the student body on UGPA and therefore more opportunity for predicting variations in law school grades. On the other hand, since there was little variation in LSAT scores there would be little chance that much variation in law school grades could be associated with the LSAT. Were a law school to follow the results of the validity study and reverse the emphasis, by placing greater weight on UGPA and less on LSAT, the next year's class would create a different validity study showing LSAT to be more valid and UGPA less valid and a yearly swing in relative weights would have begun.

Similar results could occur at a law school which admitted a significant number of minority students. The national pattern of competitive UGPAs and low LSAT scores among minority students could infect later validity studies. It is possible that a law school with substantial numbers of minority students would find the LSAT to be more valid than UGPA simply because there was more variation in LSAT scores due to the presence of low-scoring, minority students with competitive UGPAs. However, it would be wrong to immediately conclude that the college grades of minority students were to be viewed suspiciously, or that even greater weight should be placed on LSAT scores. Instead the results should be viewed as a possible artifact due simply to the prior success of minority candidates in college but not on the LSAT. If greater weight is nonetheless placed on the LSAT, minority candidates will be placed in a "Catch-22" situation in which more weight is placed on the LSAT *because* minority students are doing well in college but not on the LSAT. Here the typical solution of looking to prior educational performance as the source of low minority enrollment would be completely misplaced, since the low enrollment would instead be the result of excellent college grades that were not accompanied by high LSAT scores. It would be wrong as a matter of statistics as well as of policy to place ever increasing weight on that prerequisite on which minority students continue to do poorly, particularly when that increased weight is being placed on LSAT scores due to a rise in the college grades of minority students. To argue that the college grades of minority students are "inflated" because they are not reflected in LSAT scores is to make the test the measure of academic ability to an extent that nothing other than the test can dislodge it.

The confusion involved in selecting a formula is greatest when there is a significant danger that prejudice is being perpetrated. This danger is greatest when a particular group has been previously excluded from education and has only recently been allowed to compete for places on the basis of statistical predictions of success. In this situation, it is possible that values, assumptions or beliefs common to the previously admitted group, such as white males in law schools, will become the basis for predicting the success of other groups not previously admitted. Thus, although the purported goal is stated as a search for intellectual abilities, the test actually used may reward candidates for their whiteness rather than their brightness; or women may be rated on how similarly they think to the typical male law student. While it may be nearly impossible to disentangle prediction from prejudice, a minimal goal could be that any test relate more to the skills or abilities it is purporting to measure than it relates to group membership in a particular race or sex which it is explicitly intended to avoid measuring. Unfortunately, the single study conducted to test for this standard of fairness shows that the LSAT is considerably better at identifying the race of a law student than in predicting the law school grades of students. Different individuals can then point to the same information and claim either that the test predicts performance or that it perpetuates prejudice. Only a closer look at the data can reveal the underlying confusion. Likewise, an individual question may be highlighted because of its apparent cultural bias, only to be met with an argument that the question contributes to the predictive validity of the overall test. Here too, prejudice and prediction become confused. Evidence that a test predicts cannot be accepted as definitive evidence that the test does not prejudice certain groups.

The problem of disentangling prediction and prejudice is greatest when test information is available to those who later teach and grade students of various cultural backgrounds. It is possible that knowledge of low scores among certain racial groups may infect the educational process by lowering expectations of performance entertained by white professors and white students and ultimately create an academic atmosphere in which discouraged and disheartened minority students actually do perform below their potential. The typical first-year law school experience is one of the most likely to create this self-fulfilling prophesy, since all law students are subject to extreme tension, competitiveness and frequent self-doubt when they begin law school. When this stressful experience is added to a pervasive societal assumption that certain cultural groups or women are less likely to make successful lawyers, the danger is considerable that prejudice will create unequal educational opportunities despite affirmative admissions. Compounding the problem is the feeling among many minority students that the traditional law school curriculum is not relevant to the career goals they are pursuing. They are therefore unwilling to compete for recognition in the normal curriculum and instead seek professional training and advancement in nontraditional courses in the law school or through practical experience in a selected field. To confuse uninspired performance in law school with proof that certain students lack legal ability is to blame the victims of prior discrimination and narrow curricular offerings for continuing discrimination and unresponsive education. Similarly, it is incorrect to argue that low LSAT scores are unbiased measures of legal aptitude because they predict relatively low performance by minority students in law school. In fact, despite all of these very real dangers, the one study which bears on the issue shows that the discriminatory impact of the LSAT is greater than the discriminatory impact of first-year law school grades. Even this conclusion cannot reassure those who fear that the performance of minority students is still below what it could be in an atmosphere which did not have potential bias due to unwarranted beliefs about LSAT scores and similar assumptions about the intellectual capabilities of minority group members. The *Brown* decision sought to dispel notions of intellectual inferiority by eliminating segregation which prevented minority students from displaying their abilities in close contact with white students and teachers. It would be most unfortunate if conscious efforts to desegregate law schools are debilitated by continuing assumptions of racial inferiority which are being supported by undue emphasis on LSAT scores and undue deemphasis of UGPA.

Various adjustments to the typical admissions procedure can be justified on the basis of established research, but before outlining the major options two original research efforts published in this volume need discussion. The first is an analysis of applicants to twelve law schools conducted by Joseph L. Gannon of Boston College. He compared applicants from the four largest "feeder schools" to each of twelve law schools. The law schools provided the LSAT, UGPA and race of each applicant. Gannon compared each minority applicant with all white applicants earning grades at the same college within ±.10 on a 4.00 scale of the minority student. His goal was to eliminate as much difference as possible between the minority and white applicants being compared by requiring that they have graduated from the same college with essentially the same UGPA and have applied to the same law school. These controls on the comparison data sought to eliminate differences in educational background and attainment as explanations for any differences in LSAT scores that remained. This novel research design produced results which should cause concern, since he found that minority applicants, particularly blacks and chicanos, earned LSAT scores approximately one standard deviation below the average LSAT earned by the white comparison group (100 points on a 200-800 scale). Native American and Asian American applicants also earned LSAT scores that were statistically and practically significantly lower than whites who had earned comparable grades at the same college. Thus, all of the groups typically included in affirmative action programs exhibit similar difficulties in scoring well on the LSAT despite equal academic accomplishments.

The Gannon study is presented as a research report, but it actually highlights the problems of discrimination associated with typical admission procedures. The starting point is an admission official's discomfort in choosing among a group of applicants which has earned virtually identical UGPAs at the same college. The LSAT is used to help make the hard choices. In the process a systematic devaluation of the grades of minority students occurs, since their LSAT scores are far below those of their white counterparts. What began as a search for an administratively convenient way to admit some and reject some students with comparable records ended as a systematic exclusion of equally qualified minority applicants. If some of these minority candidates are nevertheless accepted in order to achieve a diverse student body, some will claim that "reverse discrimination" has occurred when the systematic discriminatory impact of the LSAT was actually being ameliorated. The Gannon study shows the need for race-conscious admissions when the LSAT is involved and provides a benchmark for measuring necessary adjustments in LSAT scores for minority applicants in order to put them on an equal footing with otherwise equally qualified white applicants.

The Gannon study necessarily takes UGPA as a standard in comparing students from the same college, but it does not indicate whether grades from different colleges should be taken at face value. National data shows that minority UGPAs are typically more competitive than are their LSAT scores, but this does not prove that grades do not suffer from cultural bias which would necessitate a further upward adjustment of minority grades in order to make them comparable with the grades of whites. No previous research has investigated the question of how grade distributions at traditionally and predominantly black colleges compare with distributions at other colleges. Since there are those who assume that black colleges inflate the grades of their graduates, this omission needed correction.

Sandra W. Weckesser, director of admissions at Temple University Law School, addressed the question of grade distributions at various types of colleges. Her findings should lay to rest any assumption that grades earned at black colleges are unduly inflated. To the contrary, she found that during the 1970s black colleges had consistently awarded the lowest average grades of any major category of college. At the other end of the spectrum, previous research was confirmed showing that colleges with the greatest national prestige also awarded the highest average grades. The national data which shows black applicants' UGPAs to be more competitive than their LSAT scores understates the relative discriminatory impact of the LSAT, since many of the black candidates earned their UGPAs at black colleges which have maintained a tradition of unusually strict grading standards.

Grade adjustment schemes which deflate grades from colleges with low average LSAT scores among their graduates produce a double jeopardy for black candidates from black colleges. Their grades were already low due to strict grading standards but are deflated further due to the college's low average LSAT scores among its graduates. Weckesser's report includes the grade adjustment policy followed by Temple law school in which grades are adjusted according to the relative amount of grade inflation among colleges rather than the relative LSAT of graduates.

Typically this adjustment system affords some advantage to less prestigious colleges and deemphasizes the advantage enjoyed by prestige institutions. This adjustment is in keeping with the spirit of Mr. Justice Powell's recognition that cultural bias in grading procedures may justify race-conscious admissions. Here the cultural bias in grading procedures is a self-imposed one at black colleges which guard their academic reputations by refusing to inflate grades. The adjustment favoring black college graduates is an indirect one, since the grading patterns of all colleges are compared and those at black colleges happen to be the lowest and subject to the greatest adjustment.

Together the Gannon and Weckesser reports provide a basis for adjusting both the LSAT scores and UGPAs of minority candidates. Since their research base is different, the adjustments they suggest are also different. They offer complimentary rather than contradictory adjustments. As with the adjustments discussed below, each law school must decide what its goal in the admissions process is, what problems with the traditional process are most troublesome, and what adjustments are most appropriate in avoiding the problems on the way to realizing institutional goals. No single system can command paramount legitimacy. Whatever adjustments are chosen, they must be chosen with the knowledge that another choice was possible. It is simply impossible to avoid judgments about data and policy in formulating an admissions process.

Some adjustments involve the Admission Index which determines the treatment which a file will receive during the admissions process after being placed in a presumptive admit, presumptive deny, or hold category. Some adjustments depend merely on the fact that neither LSAT nor UGPA is a very good predictor of law school grades. Two prominent psychometricians have each outlined adjustments that can be made to benefit minority groups whose members earn relatively low grades or test scores and are disadvantaged in the admissions process because of the low predictive validity of these criteria. The adjustment models depend on the fact that more members of these groups would perform well in law school than would be admitted on the basis of grades and test scores because the predictive validity of grades and test scores is relatively low. Thus, without any finding that UGPA or LSAT is culturally biased, significant adjustments can be made in traditional admissions models so that previously excluded groups do not bear the burden imposed by heavy reliance on low validity prerequisites. The Gannon and Weckesser reports justify additional adjustments to LSAT and UGPA based on cultural bias in these two measures. It is possible that a school will decide to make adjustments in LSAT scores based on national comparisons of LSAT and UGPA among applicants from various cultural backgrounds as opposed to the data in the Gannon study which is based on comparisons within the applicant pools to individual schools. Similarly, a school may consider adjusting UGPA based on the grading patterns of schools which provide a significant number of applicants yearly rather than on national data presented in the Weckesser report. All of these possible adjustments will affect the Admission Indices and the initial sorting of applicants for further evaluation.

After files are placed in categories for individual review, schools must decide upon the appropriate value of grades and test scores in this review. Since this review process is designed to investigate the strengths and weaknesses of a candidate's background, it is possible that the evaluation process will be better served if LSAT scores are deleted from files so that a single test score does not dominate the review process. On the other hand, a school may decide that the LSAT is an important trigger for looking further into a file, particularly if there is a discrepancy between the LSAT and UGPA. Here the LSAT is not being used to rank applicants, but merely to suggest a need to further inquire into a file. If this course is chosen, it is reasonable to delete the Admission Index since this composite number does not suggest a need for inquiry and creates a danger that applicants will be further compared simply on the basis of a single number instead of a careful review of a complete file. In the case of minority applicants, there are various types of information that may be better evaluated by minority students, faculty or staff. Similarly, if LSAT scores are used as a trigger for closer scrutiny, applicants are not being compared on the basis of their LSAT scores and can therefore be divided into appropriate groups for further evaluation. This suggests the desirability of separate review committees, each of which will be charged with identifying the best candidates for admission. These separate review committees will not be established to afford a "preference" to minority applicants, but rather to assure that the best review process will select the best law students. Particularly when a law school considers personal background data or career interests to be relevant in selecting a student body, separate review committees may be the best way of achieving these institutional goals. Finally, some law schools may decide that the discriminatory impact of the LSAT outweights its predictive value and consider eliminating the LSAT from the admissions process. This decision would be similar to that of a court reviewing a lawsuit brought under Title VII of the 1964 Civil Rights Act in which the discriminatory impact and predictive value of selection criteria are balanced. However, this option is not currently available, since American Bar Association accreditation standards require schools to use the LSAT during admissions. While the report does not suggest that schools be prohibited from using the LSAT, it does suggest that schools be given the option of disregarding scores and of allowing applicants to be considered without submitting test scores.

The final two essays in the volume go beyond technical adjustments in numerical indicators due to their discriminatory impact or low ability to predict first-year law school grades. The first essay, by Susan Brown and Eduardo Marenco of the Mexican American Legal Defense and Education Fund, reports the results of a year long survey of accredited California law schools and a national sampling of innovative admissions models. They report that California's law schools reflect the national trend toward increasing emphasis on the LSAT in admissions, with some schools using a process that involves a virtual cutoff score on the LSAT. Moreover, all schools have so many applicants that the LSAT scores of admitted students are far beyond those necessary to ensure a high likelihood of successfully completing legal studies. Instead of an ever increasing emphasis on a single standard such as the LSAT, Brown and Marenco suggest that weight be placed on other factors which will either enhance the likelihood that minority students will successfully complete law school or indicate that significant legal needs will be met by new lawyers. Three major admissions models are described which serve both to increase minority representation in the legal profession and to broaden the criteria by which all law school candidates are evaluated. Two versions of the first model, designed to achieve genuine diversity in law school student bodies, were designed in the wake of Mr. Justice Powell's *Bakke* opinion which gave constitutional support to the search for diversity. The other two models have been used by Temple and New York law schools so that their practical value has already been demonstrated. Brown and Marenco make it clear that law schools cannot cling to rigid numerical criteria because there are no available alternatives. In combination with the adustments to numerical criteria discussed above, their essay presents law schools with a far different problem of selecting from among a variety of effective legally defensible admissions models.

The final essay by Allan Nairn, author of the Ralph Nader Report on the Educational Testing Service, extends the concept of diversity beyond racial and ethnic categories. He explores the implications of heavy reliance on the LSAT for low income applicants to law school. Research shows that there is a relationship between the socioeconomic background of applicants and their average LSAT scores. As greater emphasis is placed on LSAT scores during the admissions process, fewer applicants from average or below average socioeconomic groups will be admitted. Although the research does not mention the race of the test takers in the study, it is reasonable to assume that the great majority were white. Thus Nairn is discussing diversity within the white student bodies of law schools. He suggests that a law school which places relatively less weight on the LSAT will have greater diversity among the *white* students admitted compared to a law school placing great weight on the LSAT which may have the same proportion of white students but a smaller proportion of low or average income white students. His analysis can be reapplied to the question of racial diversity, suggesting that placing less weight on the LSAT will produce greater diversity *within* each racial group. This seems in keeping with the original spirit of Mr. Justice Powell's endorsement of the diversity concept. Diversity is not merely a post-*Bakke* euphemism for racial preference. Diversity is a meaningful goal in its own right, juxtaposed with a student body that is composed of members of a single race and a narrow socioeconomic base.

The important point to be learned from combining the Brown and Marenco essay with the Nairn essay is that the goal of diversity can be expanded to include a great variety of factors, but that the beginning of all quests for diversity is reduced reliance on LSAT scores. Once the LSAT is deemphasized, immediate results occur through the admission of more members of racial minorities and lower socioeconomic groups. The deemphasis on LSAT scores allows a further evaluation of all applicants according to a variety of specific criteria which can refine the search for true diversity. As these specific criteria are defined and implemented new admissions models result. At no point during the evolution of new models is a retreat from academic standards contemplated. Once this point is accepted, the spectre of "reverse discrimination" recedes.

As Nairn notes, the quest for diversity in the legal profession has a special significance, since the profession is so powerful in our government of laws. If only the members of a single race or narrow socioeconomic group are allowed to be lawyers, the legitimacy of the entire legal system is called into question. Insofar as members of various cultural and socioeconomic groups have conflicting interests in the legal system, lawyers must represent those interests. More effective representation is likely to result when lawyers are themselves members of these various groups. The quest for diversity in law school is therefore not a compromise with quality legal representation but rather an enhancement of the quality of representation available to all groups.

As this volume seeks to make clear, the quest for diversity probably does involve a retreat from heavy reliance on the LSAT. The burden is now on those who would assert that true diversity can be achieved by selecting only those who agree on most of the multiple-choice questions posed on the LSAT. To date, no evidence to that effect has been offered. Just as competent lawyers can disagree in a lawsuit involving adverse interests, so too highly qualified college graduates can reasonably disagree on LSAT questions which score only one answer as correct. Once it is recognized that the tendency for members of cultural minorities is to choose a larger number of "incorrect" answers, the remedy of seeking diversity in the legal profession by deemphasizing LSAT scores no longer seems like a compromise with academic standards. At this point the myth of racial inferiority will be part of this nation's history but not of its heritage.

David M. White
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Bakke: Extending the Dream Deferred

President Walter J. Leonard, *Fisk University*

January 1, 1863 was like a brilliant dream. There were celebrations throughout the land. North and South, black women and men joined white women and men—many of the men (black and white) had served as soldiers in the recent war. Today they were together to celebrate the dawning of a new day in America's trek toward maturity. On this day, January 1, 1863, the country was taking the first step toward full membership in the family of nations. Black soldiers, in their blue coats and scarlet pants, had fought—and were yet fighting—the good fight in the cause of freedom. Many, many had died; just as they had been dying for America's freedom from the time of Crispus Attucks, a black man, a run-away slave, the first man to die—on March 5, 1770—in the Colonists' struggle to throw off the British yoke. But this was 1863 and black people believed in the basic decency of the tall man in Washington; and in his stated desire to "save the Union," abolish slavery and reunite the divided house.

Lincoln, bowing to military, economic, diplomatic and human pressure, had issued an Executive Order—The Emancipation Proclamation—initiating this country's first Affirmative Action Program. Lincoln and his cabinet knew that the seeds of discrimination were rooted so deeply in the economic, educaional, political and social life of the United States that nothing less than a radical and uncompromising effort was required to remove their many roots.

Lincoln's order touched off an era which, when viewed from today's perspective, was characterized by some of this nation's most liberal and race-minded legislation:

1. The Thirteenth Amendment to the United States Constitution in 1865.
2. The Fourteenth Amendment, enacted in 1868.
3. The Fifteenth Amendment, enacted in 1870.

Realizing that Orders and Proclamations are not self-executing, Congress acted to make a reality of the forward thrust begun by the Lincoln action. Congress' intention was manifested in four Civil Rights Acts:

1. Civil Rights Act of 1866, "An Act to Protect All Persons in the United States in their Civil Rights and Furnish the Means of their Vindication," 14 Stat. §27 (1866), 42 U.S.C. §1982 (R.S. §1978).
2. Civil Rights Act of 1875, "An Act to Protect All Citizens in their Civil and Legal Rights," 18 Stat.§335 (1875), 42 U.S.C. §1984.
3. The Act of April 20, 1871, often known as the Ku Klux Klan Act, or the Anti-Lynching Act, was entitled "An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States."
4. Civil Rights Act of March 1, 1875, entitled "An Act to Protect all Citizens in their Civil and Legal Rights." This act was designed to guarantee to black citizens equal accommodations with white citizens in all inns, public conveyances, theaters, and other places of amusement. Refusal by private persons to provide such accommodations was declared a misdemeanor, and injured parties were given the right to sue for damages. (18 Stat. §335).

Thus, by 1875, the majority in the Congress, and their supporters, assumed that adequate legal protection had been erected to promote and protect the rights of all Americans—particularly those who had just broken the fetters and shackles of "legal" slavery.

The hope was that the rule of Law after the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, and the early Civil Rights Acts, would cause the conduct of the country's affairs to ensure equality to all of its citizens.

Tragically, the *Dred Scott* mentality was still lingering in the Supreme Court of the United States. Consequently, by the 1880's, the Nation had witnessed a hostile and near-devastating assault on these new enactments. The Supreme Court's steady emasculation of this liberalizing legislation was completed in 1896, when, in *Plessy vs. Ferguson*, it gave highest judicial sanction to separate and *un*-equal treatment and existence for black people. The Executive and Congressional effort toward ending the nightmare of slavery and building bridges of opportunity was relegated to the judicial scrap heap. Black men and women were frustrated, hopes dashed, dreams of freedom deferred. They were confined to a posture of peasantry. And for fifty-two years (1896-1948) the Court effectively looked the other way when black petitioners sought its intervention in even the most blatant denials of basic freedoms. The Congress, after the Court killed its earlier initiative (1865-1875), did practically nothing for more than seventy-five years (1875-1957). Black people who had lived through 244 years of *de jure* slavery (1619-1863) were compelled to live through 101 years (1863-1964) of varying degrees of *de facto* slavery, benign neglect and malignant retreat.

After punctuating its silence in the late 1940's in cases like *Sweatt vs. Painter, Sipuel vs. Oklahoma, District of Columbia vs. John R. Thompson,* and then in 1954 in *Brown vs. Board of Education*, the Court helped to rekindle hope in the black population; maybe, at long last, the promise of 1863 and the dreams of 1866-1875 would move toward reality.

The Executive branch moved to arrest its negative inertia. Executive Orders prohibiting discrimination and prescribing affirmative efforts were issued:

1. Executive Order No. 8802, 6 Fed. Reg. 3109 (1941) Roosevelt.
2. Executive Order No. 10308, 16 Fed. Reg. 12303 (1951) Truman.
3. Executive Order No. 10479, 18 Fed. Reg. 4899 (1953) Eisenhower.
4. Executive Order No. 10925, 26 Fed. Reg. 1977 (1961) Kennedy.
5. Executive Order No. 11246, 30 Fed. Reg. 12319 (1965) Johnson.
6. Executive Order No. 11375, 32 Fed. Reg. 14303 (1967) Johnson.

Congress, reacting to public outrage over violent incidents of racial hatred and color phobia, enacted a comprehensive Civil Rights Act in 1964. It found discrimination based on race and color permeating the whole of the American system, and that fundamental problems attendant to race and color had changed very little since it, Congress, acted in 1866, 98 years earlier. In fact, Congress found, there had been—and was—a concretization of inequity and affirmative denial. So pervasive and entrenched were segregation, discrimination and exploitation that the Congress acted again in 1965, 1968, and 1972. President Nixon, whose political image was not that of a liberal, persuaded by the glaring evidence of race-based discrimination, signed into law in 1972, an amendment which strengthened the employment provision (Title VII) of the 1964 Civil Rights Act.

Inextricably interwoven into all of these earlier movements was the intense desire of black people to gain access to education. If any one item stood high on the common agenda of the slave, and now the freedman, it was the quest for learning and training. Black people were as aware as were other members of the society that education was very much the base on which stood material well-being, political representation and social mobility. Three hundred and thirty-five years (1619-1954) passed before the American system was to permit its black citizens an opportunity to exercise the privilege of a basic right: a move toward equitable access to institutions and programs provided by public funds—particularly, schools, colleges and universities.

The most significant movement toward equity in education occurred in 1968-69, following the assassination of Rev. Martin Luther King, Jr. An assessment of the position of black people in our nation was shocking. Colleges and universities, employers of all descriptions (including the federal government) maintained negative quotas (there shall be no more than) relative to black and other minority-group representation. American institutions, after public and self-examination, introduced efforts to correct their years of indifference and resulting limited representation of this nation's largest minority group.

Three years later, 1971-1972, as the number of black students began to move beyond insignificance in the student bodies around the nation (as faculty members there are still nearly too few to count), a white student named Marco DeFunis, along with his followers and supporters, began telling the world that black people were moving too fast; that they had gone too far; that they were taking seats in schools, and jobs, from bright and super-qualified white people. They began a campaign which declared that all of these laws, orders, regulations, rules and promises were just so much paper and that the nation should adopt the theory of "benign neglect".

Moreover, DeFunis and his supporters argued that minority-group persons were lowering the standards of the institutions, that their mere presence was a clear and present danger to the quality of the academy. While the contentions were absolute poppycock, the negative image and devastating impact that these tactics had, on practically everyone, created an atmosphere receptive to a *Bakke vs. Regents of California*.

The *DeFunis* and *Bakke* attack has been lethal in at least four particulars:

A. It is being waged by persons and groups who, before now, have held themselves out as liberals and as true friends of progress for black people. These "friends" and "liberals" have completely altered the social fabric in the past six years. The public expected the bigots to call names and to say that minority-group opportunities should be limited. But they did not anticipate such negative action from our friends. Consequently, when certain groups say that black people are "culturally deprived", "slow learners", "children of crisis", "educationally deprived", "underachievers", "ghetto children", "poor testers", "maladjusted", "products of disintegrated families", "poverty prone", "special admits", and that we represent "academic insufficiency", "dilution of quality", or that we have an "inherent incapacity", "urban mentality", "inferior background", and are "unqualified", the President, the Congress and the Supreme Court of the United States listen. And the media take a negative image to the entire world. And despite the fact that the statements are free of truth, many, too many, people believe them.

B. It strikes at the very heart of the quality and the basic worth of a whole class of people. It questions the standards and the values by which black people have survived and progressed in an alien and hostile society. It says that courage, humanity, motivation, the will to succeed, survival instinct, toughness, compassion, self-reliance and the conquest of past struggles are not qualities to be considered along with grade point averages and test scores because they are not quantifiable and cannot be computerized. Moreover, these experiences are more applicable to the black experiences and are not considered important to other groups in the United States society.

C. It has helped to resurrect, and is now aiding in the propagation of, the discredited myth of differences in talents and skills based on race. So effective has been this campaign, that it is nearly impossible to observe any "non-white" person on a college or university campus, or in nearly any work capacity, without wondering whether the person arrived there by some means other than the quality of her or his mind.

D. One statistic should be helpful. In 1964-65 when a push began to include black people and other racial minorities in the law schools, there were less than 800 such students out of a total of more than 65,000. By the mid-1970's the number of minority students had grown to a little more than 7,000. But during the same period the number of white students had grown to more than 100,000. Another way to view this is to note that for every seat given to a minority student during the past decade—more than *five* seats were added for white students. Now *DeFunis* and *Bakke* would take away that shallow gain and deny access to that small number of potential minority lawyers. A few facts about the *DeFunis* case should prepare us for *Bakke*. Stripped of its legal niceties, social thesis and obfuscating pronouncements about equality, fairness, objectivity and good-Americanism, *DeFunis* is basically racist and sexist.

Illustrative of this fact is the history of admissions and graduation at the Washington State Law School where *DeFunis* arose. Between 1902 and 1968, the Washington Law School graduated 3,800 white students and 12 black students. The record does not show how many white students with a more attractive record were being denied. The record does not show any protest by white students against the admission of other white students. It did not matter how the white student gained admission; the assumption was, he or she belonged there.

It is only when more than an insignificat number of minority students began to *compete* for spaces that we hear the hue and cry about discrimination and equal protection.

Allan Bakke applied to the University of California, Davis Medical School in 1973. As one of several hundreds of white male applicants, his application was considered for one of the 84 seats which had been reserved for "general admissions". The general admittees were predominantly caucasian (1 black student in five years) and the special admittees were majority Chicano (31 in 5 years); next, Black (26 in 5 years); and Asian (12 in 5 years). While only one black student had been admitted under the general or regular admissions process, Asians (37) and Chicanos (6), who are classified in as white in California, had been admitted through the 84 places reserved for "general admissions". Further, he contended that the reservation of 16 places constituted an unconstitutional intrusion into his personal and individual rights. Additionally, pressed Bakke, if he had been other than caucasian he would have been admitted. The Superior Court of California found that the University operated a racial quota; could not take race into account; that the admissions program was violative of the Equal Protection Clause of the Fourteenth Amendment, the California Constitution and Title VI of the 1964 Civil Rights Act. The court did not order his admission. Bakke appealed that portion of the decision to the Supreme Court of California. the court found that Bakke had been discriminated against because of his color and ordered the University to admit him. The University appealed for reversal to the Supreme Court of the United States. In a 5-4 decision, the Court affirmed the lower court's findings and decision, except as it proscribed the use of race as a factor in the admissions process. Thus, by a very narrow margin, the Court left the door slightly ajar for some affirmative efforts designed to assist those groups whose history has been permeated by acts of discrimination.

Several messages seem to emerge from, and through, the *Bakke* decision:

1. That racial paranoia, in an unhealthy quantity, is resurfacing in the United States. A considerable amount of national energy must now be directed toward placing the nation—once again—on a road toward the eradication of inequity based on race.
2. That the civil rights victories, which have been fought and won during recent years, have actually benefitted white persons, particularly those of working-class status and white women, in equal or greater measure than they have black people.
3. That today's generation of white persons, many, if not most, of whom are general beneficiaries of earlier and continuing racial discrimination, take little, if any, cognizance of, nor feel any responsibility for, the glaring inequality in American society.
4. That the use of *loaded* language (reverse discrimination, preferential treatment, quotas) is the tactic which will be employed to characterize the struggle of black people; thereby causing the public to view that quest as an attack on standards and unfair competition with white persons.
5. That below the surface of the brouhaha and seeming imbroglio ushered in by the *DeFunis* and *Bakke* litigation, is a firm determination to maintain superior status based on race and color. Why else would so much money and time be spent to attack less than 10 percent of the seats in colleges and universities, to which minority-group students just recently gained access, when the more than 90 percent remaining seats have been assigned according to class, race, status, financial ability, geography, athletic ability, sex, kinship and other subjective associations.
6. That those institutions and organizations which would think seriously of developing programs, even voluntary ones, which would help to eradicate barriers to access as faced by black people, and other minority-group persons, must be prepared to demonstrate that persons admitted or hired under such programs are actually *better* than any white person who might

be denied or not hired. Such a burden has a chilling effect of immeasurable proportion.

7. That the Court is rapidly returning to its posture of the late 1870's and '80's relative to the status of black people. It is construing those Amendments, which were enacted for the express purpose of moving black people into the central stream of American life, as proscribing the conduct and initiatives for which they were originally intended. Such a trend by the Court will, in my judgment, create an unnecessary and bitter racial crisis at this point in the nation's history.

The *Bakke* decision will, very likely, open a floodgate of litigation; such litigation will likely demand decisions which would be devastating to the few gains of the past few years. One would hope that the Court, at its next earliest opportunity, would move to allay the fears of minority-group persons and to arrest the litigous zeal of their opponents. The court could look to some of its own pronouncements for effective and positive guidance. For example, the record shows that the Equal Protection Clause has been variously treated since its adoption in 1868. It had been associated with, and in some instances determined, to "overlap" the reach and protection of the Due Process Clause. The contentions advanced by *DeFunis* and *Bakke* would hold that the Equal Protection Clause is so constraining that it mandates some sort of "mathematical nicety" and abhors the formulation and implementation of measures applicable to a situation in which persons are not on an unequal footing. One of the most profound statements relative to such a situation was made by the late Lyndon B. Johnson. Speaking a few weeks before his death, he admonished the nation to stop playing subtle verbal games and to get on with affirmative efforts to "equalize history". For as long as black and white persons are treated as if they have experienced an equal history, the glaring disparity will continue and black people will be forever consigned to the lower strata of American life. The Court itself has said that the Constitution is a flexible, organic document.

> "A Constitution . . . announces certain basic principles to serve as the perpetual foundation of the state. It is not intended to be a limitation on its healthful development nor an obstruction to its progress . . . The Courts in this country have shown a determination to give our written Constitution, by interpretation, such flexibility as will bring them into accord with what the courts believe to be public interest . . ."

Moreover, the Fourteenth Amendment was intended to correct and to cure the Constitutional defect which Chief Justice Taney found and announced in the *Dred Scott* decision. The Amendment has one central purpose according to Justice Miller, even as he delivered the 5 to 4 decision which devitalized much of the Fourteenth Amendment, (particularly, the Privileges and Immunities Clause):

> " . . .in the light of . . . events, almost too recent to be called history, but which are familiar to us all; and on the most casual examination of the language of these Amendments (13th, 14th, and 15th) no one can fail to be impressed with the one pervading purpose found in them all, lying at the foundation of each, and without which none of them would have been even suggested; all mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freedman and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the Fifteenth Amendment mentions the Negro by speaking of his color and his slavery. But it is just as true that [the Thirteenth and Fourteenth] were addressed to the grievances of that race, and designed to remedy them."

Few, if any, statements have more pointedly stated the purpose and the reach of the Civil War Amendments. Maybe that is the very reason why most students of American Constitutional Law find if fascinating, if not peculiar, to hear some persons, even judges and Supreme Court Justices, suggesting that the Constitution, and particularly the Civil War Amendments, are 'colorblind', and that they would be employed against the very persons and purposes for whom and which they were enacted. This very matter will shape much of future litigation. In considering whether race could be used as a factor, without overburdening constitutional permissibility, Chief Judge Coffin, writing for a unanimous court in *Associated General Contractors vs. Altschuler,* 42 U.S.L.W. 2320 (12/25/73), gave new vigor to the Constitution as a living document and rejected the idea of inflexibility in its application:

> "The first Justice Harlan's much quoted observation that 'the Constitution is colorblind . . . [and] does not . . . permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights,' *Plessy vs. Ferguson*, 163 U.S. 537, 554 (1896) (dissenting opinion), has come to represent a long term goal. It is by now well understood, however, that our society cannot be completely colorblind in the short term if we are to have a colorblind society in the long term. After centuries of viewing through colored lenses, eyes do not quickly adjust when the lenses are removed. Discrimination has a way of perpetuating itself, albeit unintentionally, because the resulting inequalities make new

> opportunities less accessible. Preferential treatment is one partial prescription to remedy our society's most intransigent and deeply-rooted inequalities."

In my judgment, the Equal Protection Clause does not deny officials of educational institutions the right to adopt rational means of implementing initiatives by which citizens are to be accorded equal and full protection of equal laws; nor does it bar reasonable classification and the use of race as a factor or as an ingredient of those measures adopted to reach that objective.

What is most needed, but does not now seem to exist, is the commitment to build a society based on equality; in an atmosphere absent of racial hostility; one of inclusion rather than of exclusion. The cornerstone of such a society may be measured by the level of access accorded to its citizens, particularly as that access relates to educational institutions and job opportunities.

In my judgment, the goal can be reached by instituting the same flexibility in admissions relative to race, that has always obtained for geographic representation, alumni sons and daughters, foreign students and any other categories deemed important by the admitting school. In this instance, the only variable is a "wise sensitivity to race." I do not call for separate admissions committees and policies. But I do insist that minority-group persons and non-minority women have representation on all important levels in the various institutions.

If the nation fails in this effort, then Mr. Justice Thurgood Marshall's observations, admonition and deeply-felt plea take on even greater immediacy and poignancy. Dissenting in the *Bakke* decision, Mr. Marshall wrote, in part:

> "The position of the Negro today in America is the tragic but inevitable consequence of centuries of unequal treatment. Measured by any benchmark of comfort or achievement, meaningful equality remains a distant dream for the Negro.
>
> "A Negro child today has a life expectancy which is shorter by more than five years than that of a white child. The Negro child's mother is over three times more likely to die of complications in childbirth, and the infant mortality rate for Negroes is nearly twice that for whites. The median income of the Negro family is only 60% that of the median of a white family, and the percentage of Negroes who live in families with incomes below the poverty line is nearly four times greater than that of whites.
>
> "When the Negro child reaches working age, he finds that America offers him significantly less than it offers his white counterpart. For Negro adults, the unemployment rate is twice that of whites and the unemployment rate for Negro teenagers is nearly three times that of white teenagers. A Negro male who completes

four years of college can expect a median annual income of merely $110 more than a white male who has only a high school diploma. Although Negroes represent 11.5% of the population, they are only 1.2% of the lawyers and judges, 2% of the physicians, 2.3% of the dentists, 1.1% of the engineers and 2.6% of the college and university professors.

"The relationship between those figures and the history of unequal treatment afforded to the Negro cannot be denied. At every point from birth to death, the impact of the past is reflected in the still disfavored position of the Negro.

". . .It is because of a legacy of unequal treatment that we now must permit the institutions of this society to give consideration to race in making decisions about who will hold the positions of influence, affluence and prestige in America. For far too long, the doors to those positions have been shut to Negroes. If we are ever to become a fully integrated society, one in which the color of a person's skin will not determine the opportunities available to him or her, we must be willing to take steps to open those doors. I do not believe that anyone can truly look into America's past and still find that a remedy for the effects of that past is impermissible.

"It has been said that this case involves only the individual, Bakke, and this University. I doubt, however, that there is a computer capable of determing the number of persons and institutions that may be affected by the decision in this case. For example, we are told by the Attorney General of the United States that at least 27 federal agencies have adopted regulations requiring recipients of federal funds to take '*affirmative action* to overcome the effects of conditions which resulted in limiting participation . . . by persons of a particular race, color, or national origin.' Supplemental Brief for the United States as *Amicus Curiae* 16 (emphasis added). I cannot even guess the number of state and local governments that have set up affirmative action programs, which may be affected by today's decision.

"I fear that we have come full circle. After the Civil War our government started several 'affirmative action' programs. The Court, in the *Civil Rights Cases* and *Plessy vs. Ferguson*, destroyed the movement toward complete equality. For almost a century no action was taken, and this nonaction was with the tacit approval of the courts. Then we had *Brown vs. Board of Education* and the Civil Rights Act of Congress, followed by numerous affirmative action programs. *Now*, we have this Court again stepping in, this time to stop affirmative action programs of the type used by the University of California."

It was George Santayana who said: "Those who cannot remember the past are condemned to repeat it." I hope that the people of this nation will remain alert to the historical origins and resulting controversy over color and race. And never forget a question put by Langston Hughes:

"What happens to a dream deferred?
Does it dry up like a raisin in the sun
Or fester like a sore and then run?
Does it stink like rotten meat
Or crust and sugar over like a syrupy sweet?
Maybe it just sags like a heavy load
Or does it explode?"

Implications for Affirmative Admissions after Bakke

Preliminary Analysis of Academic and Bar Performance of Council on Legal Education Opportunity Program Fellows, 1968–1978

Wade J. Henderson, *Executive Director, CLEO*
Linda Flores, *Associate Director, CLEO*

I. INTRODUCTION

It may well be an understatement to call *Regents of the University of California v. Bakke*,[1] the most significant United States Supreme Court decision affecting the interests of this country's minority groups since *Brown v. Board of Education.*[2] No case in recent years has generated such widespread public concern and excitement as *Bakke*; a record sixty-two *amicus curiae* briefs representing various political interests were presented to the Court for consideration. Poitical demonstrations, both pro and con, over *Bakke* and its suspected impact in the area of minority group access to higher education versus the rights of the "individual" dominated media coverage. Justice Thurgood Marshall, after providing the court in *Bakke* with an impassioned historical analysis of the evolving political status of America's minorities, went on to state:

> I fear that we have come full circle. After the Civil War our government started several "affirmative action" programs. This Court in the Civil Rights Cases and *Plessy v. Ferguson* destroyed the movement toward complete equality. For almost a century no action was taken, and this non-action was with the tacit approval of the courts. Then we had *Brown v. Board of Education* and the Civil Rights Acts of Congress followed by numerous affirmative action programs. Now, we have this Court again stepping in, this time to stop affirmative action programs of the type used by the University of California.[3]

Justice Marshall's implication is clear and unmistakable. Just as the Court effective ended America's first "Reconstruction", it was feared that it may have signaled with *Bakke* an end to the "second" as well.

There is much irony associated with Justice Marshall's dire prediction regarding the possible end of the "second reconstruction." For some, there is an inherent assumption that minority group economic, political and social gains during the approximately twelve-year period of affirmative action in higher education and employment have been immense; so immense in fact that some would proffer that there has been a declining significance of racial prejudice as a major determinant in the social advancement of minority group individuals.[4] And while there is evidence that through affirmative action admissions minority group access to higher education increased dramatically in contrast to previous levels of enrollment, there is also data which justifies less enthusiastic conclusions as well.[5]

It appears that meaningful access to graduate and professional opportunity by minority group Americans continues to be an elusive goal in the quest for greater economic and political particiption in the mainstream of society. Although significant numerical increases have been achieved vis a vis minority access to all levels of participation in higher education (when compared with pre-affirmative action period enrollment figures), the goal of parity in the percentage of minority individuals in particular academic disciplines in comparison with their representation in the population at-large is still a distant dream.[6]

Although affirmative action admission programs have been initiated in one form or another at graduate and professional levels within most academic disciplines, shifting social priorities, public misperception of actual minority achievement and a shifting economy have served to undercut substantially the reserve of "good will" which provided such a compelling catalyst to initiate many of these programs in 1968. There are numerous reasons (which will not be discussed herein) for this shift in attitude and support regarding aspirations of Blacks and other minorities for greater access to higher education opportunity. However, a review of enrollment patterns in law, medicine, engineering and business during the period 1968 to 1978 reveals, at best, a marginal "stabilization" of fairly minimal representation by minorities in these disciplines; or, at worst, they seem to project a decline in overall access to future opportunity in several select areas.[7] Based on these figures alone, the projection of significant social gains by minority groups through access to higher education opportunity, at least in the 1980's, does not appear overly promising.

II. LEGAL EDUCATION

An examination of the enrollment patterns of Blacks and other minority groups in legal education is typical of the data in the other disciplines noted. Between 1969, the advent year of race-conscious affirmative admissions in law schools, and 1979, enrollments in American Bar Association-approved schools swelled from 68,386 to 122,860 or 79.6%.[8] The reasons for this somewhat phenomenal growth are many, however, they can be distilled into essentially one factor. Over several decades, primarily because of social pressures and by government action, the relationships, rights and obligations of many persons and groups have been cast in legal terms. This has resulted in thrusting more of the problem-solving efforts of society onto the legal system, and made access to the legal profession critical in the vindication and determination of rights.[9]

During the early period of affirmative admissions, women and minorities were co-equals on the bottom rung of the admissions ladder. In 1969 women constituted 4,715 of the total or 6.89%; total minority enrollment reached 2,933 (4.29%), with more than one-half of that number derived from first-year admittance. Specifically, Black enrollment 2,128 (3.11%), and for other groups at this time, figures were even less substantial: Mexican-American enrollment totalled 412 (.6%); Puerto Rican representation numbered 61 (.08%); Pacific Islanders numbered 480 (.7%); and other Hispanics and American Indians equalled 75 (.11%) and 72 (.11%), respectively.[10]

In 1974 when the first significant judicial challenge to race-conscious admissions, *Defunis v. Odegaard*,[11] was heard by the Supreme Court of the United States, total law school enrollment had reached 110,713, or 42,327 more students than in 1969 (68,386), an increase of 61.9%. Black enrollment had grown by 134.7% in that same time to 4,995 students, an increase of 2,867 students; but Blacks still represented only 4.51% of the total law school enrollment. Similar numerical increases were achieved by other minority groups, yet marked underrepresentation overall continued to characterize the comparisons:

TABLE I

	1974 Enrollment	% Increase	% of Total Enrollment
Mexican-Americans	1,357	229.4%	1.23
Puerto Ricans	263	331.2%	.24
Asian/Pacific Islanders	1,063	121.5%	.96
Other Hispanics	387	416.0%	.35
Amer. Indians/ Alaskan Native	265	268.1%	.24

Interestingly, 21,788 women had come to represent 19.7% of the total enrollment figure by that time, a numerical increase of 17,073 students and a percentage increase of 362.1%.[12]

By 1978 when the court had rendered its opinion in *Bakke*, total law school enrollment had expanded to 121,606 students, an increase over the '74 figures of 10,893 or 9.8%. Women, on the other hand, had far out-stripped this growth for the same period, from 21,788 to 36,808, an increase of 15,020 students or 68.9%.[13]

Both Black and Mexican-American enrollment for the 1974-78 period remained relatively constant: the former rose from 4,995 to 5,350, a net increase of 355 students (7.1%) and the latter increased from 1,357 to 1,462, representing an overall increase of 105 students (7.7%). Of all groups examined only total male enrollment for the intervening years between *DeFunis* and *Bakke* actually decreased in number from 88,925 in 1974 to 84,798, a drop of 4.6%.[14] It is important to note that the decline in male enrollment occurred at a time when total law school enrollment expanded considerably.

Although covering only one discipline, the foregoing statistics seem at substantial variance with the general public perception regarding the actual numerical impact of race-conscious affirmative admissions programs on total law school enrollments. Beginning ostensibly with *DeFunis*, the sensationalist response of the media and political action groups' notions of "reverse discrimination" have helped create an impression among the public that race-conscious admissions of Blacks and other minorities served to bar "legitimate," merit-based enrollment of White males. Often it was implied and widely believed that but for the existence of an affirmative action program, a denial of admission to a seemingly qualified White male would never have occurred.[15]

In reality, minority enrollment programs in law schools were never a significant factor in the continued declining enrollment of the seemingly threatened White male. From 1974-79 the Black student enrollment average "stabilized" at roughly 4.5% over the five-year period; it has yet to exceed the high percentage achievement of 1976 when Blacks constituted 4.69% of total enrollments and Chicano enrollment rose to 1.27% of the total. And although the other minority groups experienced some increases, the overall enrollment for all but one of these groups has remained under or close to .5% of the total law school enrollment.[16] As noted earlier, legal education underwent considerable expansion of available seats to accommodate increased interest. However, such an expansion could not keep pace in maintaining the status quo (in terms of the 1974 ratio of men to women) with the new applicant pool of highly qualified women.

Note further, that although opportunities broadened through the establishment of more law school seats, not one new school accredited by the ABA between 1968 and 1979 was affiliated with a predominantly Black institution. Of the 169 schools presently approved by the ABA only four (4) are affiliated with historically or predominantly Black schools (Howard University, Texas Southern University, North Carolina Central University, and Southern University).[17]

In the final analysis, it appears that race-conscious affirmative admission in law schools has "taken the fall" in a misperceived conflict for public support pitting the rights of the individual against the interests of minority groups. The apparent tightening of the enrollment of White males occasioned primarily by the expansion of women's enrollment has received little public attention. The irony, of course, is that increased affirmative recruitment of women for law study was based in part upon the successful political inroads and arguments established by Blacks and other racial/ethnic minorities.

The vulnerability of race-conscious admissions, in federal constitutional terms and politically, in contrast to the relative acceptance of the increased admission of women, is in large measure responsible for the proliferation of legal attacks on special admission programs. Although minority groups and women have been victims of active discrimination in admission to law schools, the rationale underlying this discrimination and the remedy for each is completely different. Because many women have presented general admission qualifications equal or superior to the prevailing standard in law schools,[18] the remedy to the problem of their discrimination in admission and their underrepresentation in the profession had a somewhat simplistic solution which required little alteration to the existing "meritocratic" selection process. Active recruitment and an end to discrimination based on sex alone have been sufficient to increase dramatically the number and percentage of women in law schools.

Race-conscious admission as a remedy to the pervasive effects of past discrimination against minorities has required, in addition to special sensitivity in recruitment, dual admission criteria (separate from the prevailing standard) because of the disparate academic credentials (particularly standardized tests scores) of many minority applicants. And although necessary to the early success of programs to increase minority enrollments, it is the existence of dual criteria in admission without a sound juridicial and/or theoretical foundation which continues to pose a dilemma for greater access by Blacks and other minorities to a legal education. This may well have been the central message underlying the Court's views in *Bakke.*

On the question of race-conscious admissions, it has been difficult to decipher *Bakke*'s true meaning for the country as a whole and for minority groups in particular. From a legal standpoint, *Bakke* said very little. With seemingly fragmented opinions and little solid philosophical consensus, the *Bakke* decision may not be an accurate prediction of the Court's future direction; *Bakke* may or may not speak authoriatively to similar litigation in the same area. Only subsequent litigation and judicial refinement will shed any real legal insight beyond what we already know. However, and lest we forget, *Bakke affirmed* the positive use of race within the admission process to higher education,[19] and in so doing, sanctioned the legitimate consideration of past discrimination against racial groups as a basis for voluntary remediation.

In several aspects, *Bakke* was more than just a court decision; it was a national phenomenon. As Justice Marshall implied, *Bakke* may have been symbolic of a public policy shift portending cataclysmic impact on a range of questions involving minority group aspirations beyond 1980. *Bakke* is unquestionably reflective of a peculiar state of mind precipitated by America's current economic condition. But on its underside, *Bakke* is also an attack on the concept of "group remedy" for the legatees of group injustice. Hence, *Bakke* pits notions of individual rights against the rights of historically disenfranchised groups.

In many ways, *Bakke* begged far more questions than it answered. This is attributable not only to the scanty evidentiary record at trial, but also to the inherent limitations placed on any judicial review of a major social policy issue. The record number *amici* briefs posed questions ranging from social policy concerns, through testing, to the question of the decision's general economic impact and beyond. To some extent, the posing of a narrow question within the judicial forum may be dispositive of the final legal outcome. However, the judicial forum, as evidenced by the Court's seeming indecision in *Bakke*, may be too narrow a perspective from which to examine fully the range of questions the country posed.

Among other things, *Bakke* has highlighted the need for greater understanding of what educational measurement can and cannot accurately determine. The Court's decision could lead to inappropriate changes in admission policies in professional schools if it is seen as negating some sound practices of selection which employ both test and non-quantifiable data in decision making.[20] Consequently, the legitimacy of the testing industry and its practices must be severely scrutinized.

The twelve-year experience of the Council on Legal Education Opportunity (CLEO) has helped to shape much in the way of affirmative admission program development in legal education and may shed some light on its future after *Bakke*. Experiment, refinement, and instituionalization have earmarked much done in the name of minority group access to legal education opportunity over the last twelve years. CLEO itself can take some credit for this expansion of access to educational opportunity. Begun in 1968 through the support of two national bar associations and organizations involved in legal education and accreditation, CLEO was one of the earliest progenies of the struggle to expand educational opportunities for minority groups.[21]

Because CLEO sponsorship brought together diverse elements within the higher education community, including foundation interests and the federal government as well, the program soon became symbolic of the overall effort to broaden higher education admission beyond the law schools. The CLEO model of academic and financial support established early the validity of the program's deceptively simple, yet effective operating premise; that is, that minority and economically disadvantaged persons could be rapidly and successfully infused into legal education with no diminution in academic standards, notwithstanding measurement predictions to the contrary. Since CLEO's inception in 1968, some 2,600 persons have met the program's challenge and in the process have compiled impressive records of academic and professional achievement.[22]

However, the twelve years of CLEO have also witnessed another major educational accomplishment. With the gradual proliferation of affirmative action admissions programs has also come the increased availability of "performance related" data concerning the minority group student within affirmative action admissions. Thus, many implicit yet prevailing assumptions on minority group performance within the academic arena may now be examined in ways not previously available to us. This is no small development since many of these programs were based, initially, on untested theories regarding the academic potential of minority group students. Moreover, the opportunity to examine long-term implications and societal effects of these programs vis-a-vis the current career placement of program graduates can now be explored with more than merely theoretical projection. This information, unobtainable ten years ago, is a significant underlying consideration although totally ignored in the Supreme Court's analysis in *Bakke.*[23]

III. CLEO BACKGROUND

The Council on Legal Education Opportunity was formed in 1968 as a joint project of the American Bar Assocition, the National Bar Association, the Association of American Law Schools, and the Law School Admission Council; in 1972, La Raza National Lawyers Association became a sponsoring organization as well.[24] CLEO's programs have been designed specifically to serve those educationally and economically disadvantaged persons who, but for a program such as CLEO, would have little chance to attend an accredited law school because of economic and admission credential limitations.[25] The concerns of 1968 were concrete: less than 1% of the lawyers in this country were Black and in some states there were more than 30,000 Black residents for each Black lawyer.[26]

The present CLEO program has two central components of direct service to students in addition to its services to the law schools. The two primary student components are summer institutes for prospective law students and annual fellowships of $1,000 each to the successful graduates of the summer institutes who attend law school. The law schools individually absorb more than half the costs of the summer institutes and provide tuition scholarships, as well as financial aid to CLEO students. It is important to note that the present $1,000,000 annual federal support for CLEO generates as much as $3,000,000 of cash and services annually from law schools. Over 140 ABA-approved law schools currently enroll the approximately 550 CLEO fellows now attending law school.

The CLEO Regional Summer Institutes were originally designed to operate largely as a screening and evaluation process for minority students who would not otherwise be admitted to law school, focusing on the identification of minority and other disadvantaged students who had the potential for successful entry into the legal profession despite their lack of traditional admissions criteria. This focus has changed slightly as CLEO learned more about the educational process generally and legal education in particular. A brief review of the recent history of law school admission is the most efficient means of explaining how this change has occurred.

Prior to the post-World War II education boom, the traditional approach to law school admissions had been to enroll nearly all students who could pay the tuition (except at those schools that were admittedly discriminatory) and weed out the non-lawyers on the basis of law school performance, particularly at the end of the first year of law study. In that era, admission to the profession was determined almost solely by performance in law school, subject to limited further evaluation by bar examinations. The vastly increased number of law school applicants in the post-war era gave rise to the Law School Admission Test (LSAT), which was first administered in 1948, was in widespread use in the mid-50's and in almost universal use by 1960. In the 1960s it became a dominant factor in the admissions process for most law schools.[27] As the schools sought to increase their minority enrollments, it became apparent that the LSAT was standing as an obstacle to this endeavor and the legal education community sought an alternative admissions device. The summer institutes of CLEO were conceived to perform this service.

It seemed feasible for CLEO to revitalize the concept of performance as a means of determining legal aptitude, at least with regard to minority and economically disadvantaged applicants. The summer institutes offered mini-courses in substantive law along with legal research and writing. Initially, they were largely experimental and varied in program format; some were primarily remedial, some attempted only to identify students who showed promise of succeeding in law school, and others aimed at orienting students to the study of law. While the institutes still reflect a combination of these elements, their format and primary aim has solidified. In general, greater emphasis is placed on orientation of the students to law school methodology and on evaluation of the law aptitude and potential of the student, while remedial aspects are minimized.[28]

The second component of the current CLEO Program is the provision of fellowships to the students who go on from the summer institutes to law school. These fellowships are provided under Title IX of the Higher Education Act of 1965, as amended[29] and are currently set at $1,000 per year. These fellowships are to be used exclusively for living expenses. Each law school admitting a CLEO student makes a commitment to provide tuition, sometimes in the form of a tuition rebate, sometimes through the use of otherwise available scholarship funds, and more frequently through the use of loan funds.

In addition to the summer institutes and fellowships administered by CLEO, the National Office prepares course materials, has operated an Application-Sharing Project by which promising but unsuccessful applicants to CLEO are referred to selected law schools, serves as a catalyst for innovative projects in admissions, cooperates and shares with special admission programs operated by individual law schools and generally serves as a repository of data and information about legal education and the disadvantaged.

The CLEO Program has also published, in conjunction with Oceana Publications, Inc., two major hard-bound works of particular interest to legal educators and scholars. The first publication, *DeFunis v. Odegaard and the University of Washington,*[30] is a three-volume set containing the complete records and briefs of the case; the second, *Bakke v. Regents of the University of California,*[31] is a six-volume set similar to the *DeFunis* work. In addition, CLEO has published, in cooperation with the Howard University Law Journal, selected papers from a two-day symposium which commemorated the program's Tenth Anniversary in 1978.[32]

CLEO has come to accept the principle that the concept of economic and educational disadvantage in the face of a baccalaureate degree is not married to the concept of race. "Traditional" admissions criteria have had the effect of excluding many disadvantaged persons from law school regardless of race. Frequently, the CLEO participant is one who, by reason of cyclical poverty and attendant educational deficiency, may have experienced initial difficulty in adjusting academically to the college environment. His or her cumulative grade point average, however, may reflect an upward trend characterized by marked improvement during the third and fourth years. A large number of CLEO students have also, because of their disadvantaged background, attended undergraduate colleges that are less demanding academically than the more prestigious institutions that furnish candidates for law school. When these factors are produced by membership in an isolated group, whether minority or White in ethnic terms, the student fits the concept of disadvantaged.[33]

In response to its own thought processes and the needs of society, CLEO broadened its concerns several years ago to encompass disadvantaged White students. One readily identifiable target population of disadvantaged White students from which CLEO draws can be found in Appalachia. Yet, it comes as no surprise that the ratio of minority students in the CLEO Program remains overwhelmingly high.

The argument is often heard that no person with a baccalaureate degree can be considered disadvantaged, since he or she has an advantage over a large portion of the population. What should be remembered, however, is that this same person can be disadvantaged with respect to other college graduates attempting to enter the legal profession. The patterns that have in the past kept these groups seriously underrepresented in the socially and economically powerful institutions of society and prevented their ready access to the mechanisms for peaceful dispute resolution through the legal system will continue as part of the cyclical poverty to which this Program is addressed. This is the concept of disadvantaged with which CLEO is now working, a concept that recognizes the potential of disadvantaged for both Whites and minority groups.[34]

IV. OBJECTIVES: PROGRAM FOCUS

CLEO's purpose is to increase the number of attorneys from economically and educationally disadvantaged backgrounds. As presently structured, the program includes a six-week, in-residence summer program which is premised upon the following hypothesis: that significant numbers of disadvantaged students who would be excluded from legal education through the use of traditional measures of aptitude can, with financial and academic support, successfully negotiate the law school curriculum. The net result: increased access to the legal system and to the decision-making processes of the country by those who have been historically disenfranchised for reason of race and/or economic circumstance.

Admission to CLEO is contingent upon two primary factors: economic-background eligibility and the prospect for successful matriculation in law school as indicated by the applicant's complete academic profile, notwithstanding marginal performance on the Law School Admission Test.[35]

Although CLEO conducts a more comprehensive approach to selection in its emphasis on non-quantifiable data, the academic screening for the program must still take into account prevailing admissions standards of law schools. CLEO reviews an applicant's entire file to determine what the prospects are for placement in law school once the summer institute experience has been completed. Persons whose records show little real prospect for admission to accredited schools (usually because of extremely low LSAT scores) are not generally accepted. But, neither does CLEO attempt to select merely the best credentialed applicants.

Many persons who have performed exceptionally well in undergraduate school and on the LSAT would benefit less substantially from the summer institute experience because their admission to law school is less likely to be contingent upon this additional measure of performance potential. Most such applicants who may be otherwise disadvantaged are ably recruited by law schools and can successfully compete for institutional and university financial assistance; therefore, to increase the *overall* number of minority and economically disadvantaged members of the legal profession, the program focuses upon a "middle" group. In quantifiable terms, this "middle" group has been established within a range of 350 to 525 on LSAT performance, and an average undergraduate grade point average of 2.82.[36] However, because present funding restrictions limit financial assistance to successful institute participants, CLEO looks to persons who manifest an ability to negotiate law school and in whom law schools, in cooperation with CLEO, are willing to devote substantial attention and resources.

Emphasis in the institutes is placed on the orientation of the student to the law school experience and the evaluation, in a classroom situation, of the law aptitude and potential of the student. As noted previously, compensatory and remedial academic aspects are now minimized.

The curriculum of the summer institutes focuses on two central aspects: the methodology of legal analysis and law development (using specifically structured substantive law courses as vehicles) and the evaluation of students' ability to master it. At a minimum, a summer program's curriculum—which is approved by CLEO's governing board—includes specially-tailored courses which are derived from the first-year law school curriculum and which emphasize abstract thinking methods of legal analysis and synthesis, as well as, legal research methods and techniques. The summer institutes are structured to include such courses as torts, contracts, property, criminal law, etc. Efforts are made to select manageable legal cases which are not generally repeated in the first year of law school; in this way program participants are not lulled by the false belief that they have received a substantive "head-start" on their formal legal training. Each institute also offers a detailed legal writing course which focuses on outlining, organizing thoughts, developing argumentative essays, researching and generally committing to writing legal analyses and responses to problems given in the substantive courses. From 35-50% of the summer institute curriculum is devoted to this purpose.[37]

The intensive course of study covers a six-week period, wherein one-half week is reserved for student evaluations, including "one-on-one" faculty-student performance reviews of institute participants' work. The summer institutes begin in mid-June and end by July 31st of each year; this schedule is designed to permit maximum program impact on the law school admission process on behalf of successful CLEO participants. Exclusive of tutorial sessions, program participants receive 14 to 16 class contact hours per week. Through constant feedback between the professor/teaching assistant and student, an individual can identify not only academic problems, but also areas of strength—the central focus of the institute program. In this manner, a participant gains confidence in him/herself, as well as in his/her abilities.

Each institute also attempts to establish a close rapport between professors, teaching assistants, and students in an informal atmosphere. Teaching assistants are each assigned a specific number of students, live in the same dormitory facilities as the students, and attend classes with them. A student thus can obtain academic assistance as needed.

V. DATA RETRIEVAL PROCESS

In view of the upcoming legislative reauthorization of CLEO, the CLEO National Office initiated a comprehensive survey in the summer of 1978 to compile relevant data on the performance of the over 1,400 Progrm participants during their matriculation in law school. While data on the three-year law school performance of CLEO Fellows is readily available from the law schools via academic reporting requirements associated with each Fellow's continuing fellowship eligibility, additional data on post-law school performance (i.e., bar data and career patterns) has been difficult to obtain. Although the National Office attempts to solicit this information annually from graduating CLEO Fellows, the data on hand remains incomplete. This has resulted primarily from a failure of CLEO Fellows to remain in contact with the National Office, particularly after graduation, and is further compounded by the typically transient nature of the law graduate vis a vis his/her place of residence.

As a device to initiate the survey, it was determined that CLEO's Tenth Anniversary Commemorative Symposium, held at Howard University School of Law in the Fall of 1978, could provide a unique opportunity for re-establishing contact with the more than 1,400 CLEO Fellows. The Symposium, therefore, served as the launching point for generating the interest and cooperation of CLEO Fellows in supplying the relevant performance data.

The National Office conducted a review of its internal program files to begin the process of locating Program Fellows. Recognizing that the information contained in the CLEO file would, in many instances, be outdated, it was determined that a process for address verification was necessary. Initially, the process focused upon data obtained by way of the law schools from which the Fellows graduated. Acordingly, a solicitation to all of the then 164 ABA-approved law schools was sent requesting the addresses for all CLEO students having attended their law school since the inception of the Program in 1968, accompanied by a list which denominated each CLEO student by year of law school entry.

The law schools proved cooperative in supplying the addresses which they had on hand. However, in many instances, the information provided proved inaccurate; apparently, many of the schools encountered CLEO's similar difficulty in keeping track of the location of their alumni. Also, a few schools refused to disclose the data, maintaining that student privacy rights precluded the dissemination of the information requested, although at least one law school in this latter category forwarded CLEO's inquiry directly to the Fellows themselves.

Upon receipt of addresses from the law schools, a package of information regarding the upcoming Symposium was mailed to each CLEO Fellow. In many instances, these Symposium packages were returned to CLEO; obviously, the initial success of the venture was entirely contingent upon the accuracy of each law school's address data for its graduates. However, most were not returned to the National Office, nor did we receive the return postcard provided from them.

After the Symposium, a second mailing to those CLEO Fellows who had provided their current address via the return postcard was conducted. This package was directed principally at stimulating support for CLEO's reauthorization effort in Congress and included a general letter explaining the reauthorization campaign and the need for their assistance and cooperation, the questionnaire regarding employment and bar performance data, and a request for address information on fellow CLEO participants. It should be noted that the questionnaire and the law school reporting files have been, and continue to be, the central components for obtaining the data for the CLEO Fellows Performance Survey.

Because current address information on CLEO Fellows remained difficult to obtain, the data retrieval process developed more slowly than was initially anticipated. The first stage of the process was completed by mid-December, 1978 with more than 1,200 mailings to CLEO Fellows, based on information obtained from both the law schools and CLEO's program files. However, although response questionnaires from the initial mailing were encouraging, by June 1979 the National Office had received only 300 responses. The information was viewed as an insufficient basis for the more thorough study initially envisioned. Therefore, a secondary effort relating to identification of current address information was devised to obtain additional data.

The revised strategy to obtain accurate address information centered on secondary sources which included the enlistment of past Summer Institute Directors' support for the project. This approach was precipitated by offers of assistance from the Directors themselves who had been apprised of CLEO's reauthorization objectives. Because several of the Program's Directors indicated that they had maintained regular contact with Fellows who had participated in their respective Institutes, the National Office, after synthesizing the results of its two previous efforts, compiled a list of CLEO Fellows for whom current address information remained outstanding. The various lists, developed according to the Summer Institute attended, were forwarded to the respective Institute Directors to obtain any address data available to them. Sample questionnaires were provided as well so that they might be fully informed as to the kind of information being sought from the CLEO Fellows.

In total, the Survey produced bar performance data on approximately 690 CLEO Fellows and employment information for approximately 305. The following tables provide the information on CLEO Fellows' performance in various categories.

TABLE II[38]

CLEO PARTICIPANT DATA REPORT (1968-1979)

	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	Total
Number of students participating in CLEO since its inception	161	448	212	221	217	233	225	251	220	221	217	224	2,850
Number of students successfully completing summer institute	151	444	197	210	123	229	225	244	216	208	213	222	2,722
Number of summer institute graduates entering law school	131	400	191	207	210	218	219	234	205	197	203	214	2,629
Number of students who have graduated from law school	83	292	130	138	142	158	161	157	149	NA	NA	NA	1,410
Number of students enrolled in law school receiving CLEO stipends									6	152	159	206	523
Number of students enrolled in law school *not* receiving CLEO stipends									10	2	7	7	26
Total number of students enrolled in law school									16	154	166	213	549
Number of law school graduates who have passed the bar examination	69	176	83	63	56	53	55	47	3	NA	NA	NA	605
Number of law school graduates for whom CLEO has no bar data**	8	85	38	71	81	97	98	98	145	NA	NA	NA	721
Number of law school graduates who failed the bar examination	7	30	10	3	5	8	6	12	NA	NA	NA	NA	81
* Didn't take				1*			2*						+3
Number of students who audited the summer institute programs	0	1	6	3	1	16	23	5	9	11	19	6	91

**Bar information is grossly understated. The CLEO National Office has been conducting an extenive survey over the past year of *all* CLEO law school graduates to determine more accurate bar statistics. This information is not generally known by the law schools and can only be ascertained with accuracy if it is known in which of the fifty (50) jurisdictions an individual sat for an examination. The survey, when completed, will hopefully provide more satisfactory statistical results.

TABLE II (con't)

Number of students who have deferred entrance, withdrawn or failed in law school

	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Deferred entrance	-	-	-	-	-	-	-	-	-	4	3	5
Leave of absence	-	-	-	-	-	-	-	4	1	3	-	-
Academic dismissal	21	52	43	49	31	30	31	29	24	23	-	-
Withdrew-good standing	1	7	10	10	7	1	4	-	-	-	-	-
Withdrew-failing	8	18	7	5	1	3	3	-	-	-	-	-
Withdrew-military	5	6	-	-	-	-	1	-	-	-	-	-
Withdrew-illness/death	1	4	-	1	-	3	2	1	1	2	1	-
Withdrew-financial	-	2	-	1	2	-	-	-	-	1	-	-
Withdrew-unknown	12	18	1	4	28	23	18	18	10	11	9	1
	48	108	61	70	69	60	59	52	36	47	13	6

Unknown Academic Status: Some law schools became reluctant in 1978-1979 to release academic data on CLEO students. The academic status of the following students is presently unknown.

1975	1976	1977	1978	1979	Total
25	6	5	4	0	40

Number of CLEO students presently enrolled in law school —by ethnic breakdown

	1976	1977	1978	1979	Total
American Indian	-	-	-	3	3
Appalachian	1	-	-	1	2
Asian American	-	5	4	5	14
Black	8	80	102	111	301
Black Panamanian	-	-	1	-	1
Black West Indian	-	1	-	-	1
Caucasian	-	2	2	6	10
Chicano	6	44	34	55	139
Cuban American	-	3	2	5	10
Dominican American	-	-	1	-	1
Filipino American	-	-	-	1	1
Hawaiian	-	-	1	-	1
Italian American	-	-	1	-	1
Puerto Rican	1	17	16	18	52
Spanish Surname	-	2	2	2	6
Other Groups	-	-	-	5	5
Total	16	154	166	213	549

By sexual breakdown

	1976	1977	1978	1979	Total
Male	4	83	84	102	273
Female	2	69	75	104	250

Anticipated law school enrollment of CLEO participants in 1979-80:	220
Number of law schools which have participated by accepting CLEO students:	144

The difficulties encountered in retrieving useful data through the CLEO Fellows' Survey has highlighted a common problem in research about affirmative action admission programs in legal education. With few exceptions, most law schools have incomplete data, at best, on the actual academic performance of students admitted via these programs. As for bar performance and employment experiences, these categories are even more incomplete.

The dearth of concrete data in this area is reflective of several considerations: First, many schools appeared reluctant to organize data based on race for fear that the information obtained could be misused and/or misunderstood as to its intended purpose. Secondly, to the extent that some of the early returns in reference to the academic performance of some "specially admitted" students were lower than perhaps expected, it was thought that too great an emphasis on this aspect of the affirmative action admissions questions, particularly through studies focusing only on those students specially admitted, would be premature and contrary to the best interests of these programs. Although marginal performance by some students in these programs should have been anticipated for numerous, valid reasons, such fears of misuse of the data and misunderstanding as to its collection precluded the gathering of information which would ultimately be useful.

VI. DATA ANALYSIS: CLEO FELLOWS' ACADEMIC AND BAR PERFORMANCE DATA

A. Scope of the Survey

The survey of CLEO graduates' academic and bar performance data involved 690 Program Fellows primarily from the entering classes of 1968 through 1975, that is, the law graduates of the classes 1971 through 1978. The survey represented a 48.9% response from the total available pool of 1,410 CLEO law school graduates during the time period covered. It should be noted that no significant data on bar performance and employment pursuits is yet available from the CLEO entering classes of 1976 through 1979: the 1976 entering class (i.e., 1979 law graduates) has not yet been fully surveyed; the entering classes of 1977 through 1979 are currently enrolled in law school.

Table III presents figures reflecting both the number of responses received per class, as well as the total number of students per class who were eligible to respond to the survey. As can be seen, the highest level of response by percentage of those eligible to respond were obtained from the earlier classes of the Program, i.e., 1968 to 1971. While it has been difficult to ascertain the factors behind the high frequency of response from students in earlier years of the program, it may well be attributable to a particularly strong sense of identification with the program and a sense of collegiality which seems to have been shared among the students in these early CLEO classes. To the extent that "word-ofmouth" contact among Fellows may have influenced the number of responses received, the highest numbers from earlier years may also reflect an increased level of continuing personal interaction.

TABLE III

Class	Absolute Freq. Response	Adjusted Freq. %	% of Responses for Total Class
1968	75 (83)	10.9	90.4
1969	207 (292)	30.2	70.9
1970	91 (130)	13.3	69.2
1971	66 (138)	9.6	47.8
1972	61 (142)	8.9	43.0
1973	61 (158)	8.9	38.6
1974	65 (161)	9.5	40.4
1975	57 (157)	8.3	36.3
1976	3 (149)	0.4	2.9
No Data	4		
	690 (1410)	100.0%	48.9

Employment status may well be another factor which may help to explain the higher frequency of response from graduates of the earlier years. Graduates of the entering classes of 1968 through 1971 have been in the profession for a minimum of six years; their employment data tends to reflect a career pattern of work experiences which are consistent with the early professional experiences of most lawyers. It appears that the first few years of a lawyer's work experience after graduation are used to sharpen practical skills and to secure varied professional experiences. After the first five years or so a pattern of longer-term work experiences seem to emerge, with lawyers shifting emphasis from a variety of experiences to the development of areas of specialization. Data from Fellows of the earlier years tend to reflect the higher salaries and the greater measure of professional "stability" with longer-term professional relationships than is evidenced by more recent graduates.

B. LSAT and UGPA Data

Tables IV through Table VI provide an interesting, though limited, basis for comparison of the typical law school admissions profile between CLEO and non-CLEO law school matriculants using quantifiable variables such as undergraduate grade point average (UGPA) and performance scores from the Law School Admission Test (LSAT). In addition, data on the variables of race/ethnicity are also supplied, and may help to establish a more accurate view of the typical survey respondent.

Of the 664 Fellows for whom we had admission test score data, the mean score of performance on the LSAT was 422 (score range: 200-800), mean UGPA was 2.76 on the scale of 4.00=A. While it is difficult to make many meaningful comparisons in the law school admissions profile using the undergraduate grade and pre-law test performance of CLEO and similarly-credentialed non-CLEO law school matriculants, it can be said generally that the overall admissions posture of these two groups was consistent. No law school can make predicatively valid admissions decisions utilizing only data from isolated variables without other indicia of student performance capability. In the case of both mean UGPA and LSAT of the CLEO Fellows surveyed, it would be improper to project these factors alone as indicative of the potential law school performance projected for this group at large. This approach would be particularly improper given the weight accorded to non-quantifiable data by most of the law schools which admitted these CLEO students.

However, mean UGPA and LSAT data presents a useful basis for review between CLEO and non-CLEO law school students, particularly when variables of race/ethnicity and subsequent law school performance (Table VIII) are factored into the analysis. For now, suffice it to say that the mean LSAT performance at 422 is currently well below the national norm average of 551.9.[39] It should be noted here as well that although the mean CLEO LSAT data reflects an average composite score drawn over several years of individual scores, there has been no loss in the general reliability of the measuring instrument; the LSAT has not been subject to the same inflation factors which have affected other academic measurements such as undergraduate grades.

TABLE IV
STUDENTS' LAW SCHOOL ADMISSION TEST SCORES

Mean	422.33
Median	426.64
Standard Deviation	69.85
Minimum	200.00
Maximum	663.00

Valid cases=664
Missing cases=26

TABLE V
STUDENTS' UNDERGRADUATE GRADE POINT AVERAGE

Mean	2.76
Median	2.78
Standard Deviation	0.44
Minimum	1.33
Maximum	4.12

Valid cases=649
Missing cases=41

TABLE VI
STUDENTS' RACE/ETHNICITY

	No.	%
Asian American	21	3.0
Black	462	67.0
Chicano	159	23.0
Puerto Rican	22	3.2
Italian American	1	0.1
Cuban	1	0.1
Appalachian	1	0.1
Unknown	23	3.3
Total	690	100

Valid cases=667
Missing cases=23

C. Academic Performance

Tables VII and VIII reflect the law schools attended by those Fellows reporting to our survey, as well as the general academic performance of these individuals by year of enrollment. It should be noted that the students covered by the survey attended a total of 107 different ABA-approved law schools. ABA approval for the law schools attended by CLEO Fellows is significant in that the approval establishes a professionally and federally sanctioned level of minimum academic qualification to insure some uniformity in academic program provided.

Of the 107 schools attended by the Fellows surveyed, twenty-seven (27) particular schools are highlighted because of their association with a majority of students reporting; 415 of the 682 students (60.8%) for whom data on this factor is available attended one of the 27 highlighted schools. It should be noted as well that the highlighted schools present a varied cross-section of institutions currently serving the interests of legal education, including many schools noted nationally for their solid academic program and rigorously applied academic standards. This factor was considered significant because the data on Fellows' academic standing reflects a surprisingly successful record of performance for the period of law school enrollment.

Table VIII presents the academic standing (and hence, the overall academic performance) of the Fellows surveyed over the three years of law school enrollment. Because it would be virtually impossible to convert individual law school grades to a consistent and uniform standard, given the inherent differences in the grading processes of the individual schools, this paper utilizes general "academic standing" at the conclusion of a given year as the measure of student performance. The variable for academic standing was established as the minimum requirement for the maintenance of "good standing" status as determined by the law school in question. Any variation to the law school's numerical minimum was characterized as less than "good standing" regardless of how this variance was termed by the law school itself.

In the first year of law school, 87% of those Fellows surveyed were reported to be in good standing at the conclusion of that period. At the conclusion of the second year of law study the number of students in good standing rose to 94.1%; and in the third year the number rose to a seemingly phenomenal 99.6% in good academic standing.

A number of cautionary caveats may be in order when interpreting the data on CLEO Fellows' academic performance. First and most apparent, all CLEO Fellows covered in the survey, which includes an analysis of law school *and* bar performance, are (by their inclusion in the survey) law school graduates. Secondly, had *all* Fellows who have graduated from law school during the period covered been included in the analysis, these overall figures may have been affected. Thirdly, the successful performance of CLEO Fellows in law school (particularly beyond the first year) may not be attributable entirely to the CLEO institute experience; obviously factors relating to the particular academic environment and financial cirumstance in which these Fellows found themselves impacted significantly on overall academic performance.

Yet, notwithstanding these limitations, the data on Fellows' academic performance is impressive, although little national data can be found which presents a clear picture of the minority law students' rate of retention in law schools for the time period examined. Moreover, when one considers the "predictive index" used in determining student performance in the first year of law study, the success of the CLEO Fellows looms even greater.

TABLE VII
Law School Attended; 10 or more graduates

School	Absolute Freq.	Adjusted Freq. %
1. U. Denver	32	4.7
2. U. New Mexico	28	4.1
3. UCLA	25	3.7
4. U. Virginia	23	3.4
5. U. Calif.-Davis	21	3.1
6. Wayne State U.	21	3.1
7. U. Texas	18	2.6
8. Howard U.	17	2.5
9. U. Illinois	16	2.3
10. Texas Southern U.	15	2.2
11. Georgetown U.	14	2.1
12. George Washington U.	14	2.1
13. U. Arizona	13	1.9
14. U. Southern Calif.	13	1.9
15. Temple U.	13	1.9
16. Arizona State U.	12	1.8
17. U. Calif.-Berkeley	12	1.8
18. Columbia	12	1.8
19. Harvard	12	1.8
20. U. Florida-Gainesville	11	1.6
21. U. Miami	11	1.6
22. Rutgers U. - Newark	11	1.6
23. U. Santa Clara	11	1.6
24. U. Calif.-Hastings	10	1.5
25. U. Houston	10	1.5
26. U. Iowa	10	1.5
27. Notre Dame	10	1.5
Total	415	61.2

Total Schools: 166
Missing Cases=8; Valid Cases=682

TABLE VIII

ACADEMIC STANDING	FIRST YEAR		SECOND YEAR		THIRD YEAR	
	No.	%	No.	%	No.	%
In Good Standing	594	86.1	643	93.2	677	98.1
In Less than Good Standing	89	12.9	40	5.8	3	0.4
Missing Cases	7	1.0	7	1.0	10	1.4
Total	690	100.0	690	100.0	690	100.0

NOTE: Percentages may not always sum to 100.0% due to rounding error.

D. Bar Examination Results

The performance of the minority group law graduates, particularly those who were admitted to law school by way of affirmative admissions programs, has been a continuing source of concern in legal education since 1969. From time to time, charges have been issued stating that minority group applicants to the bar do not fare as well as their White colleagues. While little concrete data of actual overall minority group bar performance has been compiled, particularly on a national level, court records from litigation filed in disputes over minority group bar admission offer some insight into this problem.[40] From a review of the statistical data on minority group bar passage rates which has been compiled for several "class action" suits alleging discriminatory practices of one kind or another, it seems fair to conclude that minority group bar performance and its relationship to affirmative admission programs represent a substantial policy question which has affected, at least subliminally, the debate surrounding the viability of affirmative action efforts.

The question of the social utility of affirmative admission as an additional basis for continuation of these programs has been called into question by bar performance of minority group applicants which is substantially at variance (at the low-end of the scale) with the prevailing norm. Litigation, particularly in "class action" suits where minority group applicants comprise the class, challenging discriminatory practices and policies in the administration of bar examinations in various states, reflects the other significant side of the issue. For understandable reasons, the boards of bar examiners of most jurisdictions contend that they do not collect statistical information based on the race of applicants. Under these conditions it is virtually impossible to check the accuracy of charges that minority group applicants are having trouble with the bar examinations in various states or to determine why this is so if the statement is accurate.

An analysis of the aggregate bar performance of CLEO Fellows may shed some light on this issue, although obviously this data can in no way address the legitimacy of claims of discrimination in the examination process itself, nor can it reflect any but the most general insights into the linkage, if any, between affirmative admissions and subsequent bar performance. The CLEO Fellows bar performance data does, however, demonstrate rather conclusively that a negative correlation between bar performance and the existence of an affirmative admissions process does not exist; and further, given the fairly national scope of the data based on graduates from many different institutions and across many different jurisdictions, that no blanket repudiation of the "social utility" argument based on bar performance alone can be established.

Tables IX and X present aggregate data on CLEO Fellows bar performance. Table IX specifically reflects the year of law school graduation and the frequency percentage of response for the Fellows who participated in the survey. A fairly broad distribution involving the years of graduation can be seen, although the frequency percentage of responses provides a fairly even basis for analysis.

TABLE IX
YEAR GRADUATED
FROM LAW SCHOOL

YR.	NO.	%
1970	5	0.7
1971	48	7.0
1972	195	28.3
1973	118	16.8
1974	69	10.0
1975	61	8.8
1976	62	9.0
1977	63	9.1
1978	63	9.1
1979	3	0.4
Unknown	5	0.7
Total	690	100.0

TABLE X
RESULTS OF BAR SITTING

	No.	%
Pass—1st Try	378	54.8
Pass—2nd Try	123	17.8
Pass—3rd Try or More	81	11.7
Fail/No Pass Reported	96	13.9
Missing Cases	12	1.7
TOTAL	690	100.0

Table X reflects actual bar performance results for the Fellows who responded to the survey. It is important to note that the bar passage rates were restricted to the first jurisdiction in which a graduate sat for the bar examination. Moreover, in those few cases where no specific pass date for an examination was available to discern between a bar pass on the first or second try (e.g., a June 1973 graduate whose only recorded sitting and pass on a bar examination occurred in February 1974), it was assumed for the purpose of this study that the individual first sat for the bar in the *same* year as his graduation. Hence, the February 1974 sitting constituted the second attempt. Obviously, where no specific date of bar passage is listed, yet where bar admittance was reported, it is assumed that this admission occurred on a third or subsequent sitting.

The results of the survey of CLEO Fellows' bar performance has established that 55.8% or 378 of the 678 graduates responding passed their respective bar examination on the first sitting, and that an additional 18.1% or 123 Fellows passed on the second attempt. A total of 73.9% or 501 of the 678 Fellows who responded had passed their respective bar examination at least by their second attempt.

Comparative analysis utilizing national data would obviously strengthen conclusions which can be drawn from the CLEO survey data of bar examination performance.[41] But even in the absence of such data, the CLEO Fellows' bar performance can be viewed as significant in its own right, particularly when one examines the quantifiable data used in predicting the admission of these students to law school in the first instance. Although the predictive index analysis of quantifiable data such as LSAT and UGPA has little or no utility in predicting subsequent bar performance, the use of such data alone as a "floor" in determining which individuals should be admitted to law schools based on their probability of success in the first year must be viewed in light of additional factors such as whether a positive correlation between the quantifiable data and subsequent bar performance can be established. To the extent that such a minimum floor cannot be established, its absence may raise additional questions regarding the slavish adherence to a strictly numerical quantification of test performance and undergraduate grade point average.

VII. CROSS TABULATIONS USING VARIABLES OF RACE/ETHNICITY, UGPA, LSAT, AND FIRST YEAR ACADEMIC STANDING IN LAW SCHOOL

Given the purpose and history of CLEO, it should not be surprising that most CLEO Fellows, though chosen because of their disadvantaged background, constitute members of racial and ethnic minority groups. For CLEO's purpose "disadvantaged backgrounds" which serve as a basis for student selection are those that hinder individuals, particularly minority group members, from gaining admission to law school and from completing successfully a course of study. It was not until 1972 that CLEO broadened its selection process to include non-minority applicants in its program efforts; hence most of the 690 program Fellows covered in the survey are from designated minority groups.

In an effort to further quantify the available data on CLEO Fellows, an attempt was made to ascertain whether any statistically significant correlations exist between the race/ethnicity of a particular CLEO Fellow and subsequent academic performance. Cross-tabulations were performed on data matching the race variable with those of undergraduate grade point average, LSAT scores, first-year academic standing in law school, and the rate of bar examination passage.

Several points of interest should be noted when reviewing the next several Tables. First, approximately seventy percent (70%) of the survey pool was comprised of Black CLEO Fellows, twenty-four percent (24%) reflects Chicano participants, with approximately three percent (3%) each provided by Puerto Rican and Asian American Program Fellows. Secondly, the actual frequency of returns by the Fellows per CLEO summer institute attended is particularly well distributed.

The following three Tables of cross-tabulations reveal several interesting phenomena on the success of CLEO Fellows as they encounter the rigors of law school and the bar examination. However, to fully appreciate the significance of this data, it may be necessary to focus on the performance of an isolated racial/ethnic group.

Because Blacks constitute approximately seventy percent (70%) of the sample used for this study, they provide a useful population for analysis. Mean achievement by Black students on the LSAT of 413.98 and on undergraduate performance of 2.76 on the 4.0 scale is well below the national norm in both of these categories. Yet, eighty-five percent (85%) or 392 of the 461 students in the survey were in "good standing" at the end of their first academic year in law school. More significant still, approximately seventy-seven percent (76.9%) or 349 of the 454 students who reported have passed the bar examination on the first or second attempt. The figures for other minority groups surveyed offered similar returns.

TABLE XI
DESCRIPTIVE STATISTICS FOR UNDERGRADUATE GPA AND LSAT BY STUDENTS' RACE-ETHNICITY

Race-Ethnicity	No.	Mean UGPA	Mean LSAT
Asian American	20	3.00	463.14
Black	431	2.76	413.98
Chicano	156	2.72	437.53
Puerto Rican	22	2.93	416.62
Italian American	1	2.85	456.00
Cuban	1	2.78	436.00
Appalachian	1	2.82	529.00
Unknown	17	2.80	444.89

TABLE XII
FIRST-YEAR ACADEMIC STANDING BY RACE-ETHNICITY

RACE ETHNICITY	IN GOOD STANDING No. & % of Cultural Group	IN LESS THAN GOOD STANDING No. & % of Cultural Group	Total and % of Total Survey
Asian American	20 95.2%	1 4.8%	21 3.2%
Black	392 85.0%	69 15.0%	461 69.3%
Chicano	142 89.9%	16 10.1%	158 23.8%
Puerto Rican	20 90.9%	2 9.1%	22 3.3%
Italian American	1 100.0%	0	1 0.2%
Cuban	1 100.0%	0	1 0.2%
Appalachian	1 100.0%	0	1 0.2%
Totals	577 86.8%	88 13.2%	665 100.0%

Number of missing observations=25

NOTE: Percentages may not always sum to 100% due to rounding error.

TABLE XIII
BAR PERFORMANCE BY RACE-ETHNICITY

RACE ETHNICITY	PASS 1st TRY No. & % of Cultural Group	PASS 2nd TRY No. & % of Cultural Group	PASS 3rd TRY No. & % of Cultural Group	FAIL/NO PASS REPORTED No. & % of Cultural Group	Total and % of Total Survey
Asian American	10 47.6%	4 19.0%	1 4.8%	6 28.6%	21 3.2%
Black	262 54.5%	87 19.2%	55 12.1%	50 11.0%	454 69.0%
Chicano	85 53.8%	23 14.6%	22 13.9%	28 17.7%	158 24.0%
Puerto Rican	8 36.4%	4 18.2%	2 9.1%	8 36.4%	22 3.3%
Italian American	0	0	0	1 100.0%	1 0.2%
Cuban	1 100.0%	0	0	0	1 0.2%
Appalachian	1 100.0%	0	0	0	1 0.2%
Totals	367 55.8%	118 17.9%	80 12.2%	93 14.1%	658 100.0%

Number of missing observations=32

NOTE: Percentages may not always sum to 100.0% due to rounding error.

A. First Year Academic Standing/Summer Institute Attended

Between 1968 and 1975, a total of sixty-two (62) regional summer institutes were held under CLEO's auspices. Although similar in both concept and teaching methodology, the CLEO Summer Institutes have avoided the use of standardized curricular materials with the singular exception of the program's legal writing component, which has relied on materials separately prepared for CLEO by law professors Norman Brand and Ann Fagan Ginger.

Minimally, the curriculum of CLEO's summer institutes includes courses which are derived from first-year law school curricula and which emphasize legal methods and techniques, labor abstract thinking and deal descriptively with methods of legal analysis and synthesis. The planned course of study for each institute spans a period of five and one-half weeks with the remaining half week reserved for evaluations and one-on-one reviews of the institute participants' work. Exclusive of tutorial sessions, students receive from fourteen to sixteen class contact hours per week. Care is taken to avoid merely reducing regular law school courses to a six-week format; each selected course is cautiously circumscribed. Emphasis is placed on skills development rather than subject matter coverage.

To the extent that the CLEO Summer Institutes adhere to uniform teaching methodology, regardless of course content, the performance of the individual Fellows across the institutes should be relatively consistent. Moreover, to the extent that CLEO's Summer Intitutes perform an evaluative function for the law schools as to the performance potential of recommended graduates, one would expect a measure of uniformity in the success of candidates regardless of the law school in which a candidate might subsequently enroll.

To determine whether significant correlations could be found between the Summer Institute attended and subsequent law school performance in the first academic year, a cross-tabulation of these two variables was attempted. The percentage of graduates per institute in "good standing" at the end of the first year appears amazingly consistent over the sixty-two programs; moreover, the frequency of returns per institute is particularly well distributed. In the final analysis the reliability of the institutes' evaluation process as a measure of performance prediction, particularly for candidates from disadvantaged backgrounds, seems well-established; eighty-seven percent (87%) or 594 of the 683 CLEO Fellows surveyed were in "good standing" at the end of their first year of law study.

It is important to note as well when reviewing this data that information on the academic standing of CLEO Fellows was obtained directly from the law schools and was not obtained as a part of the questionnaire survey. The accuracy of the data, therefore, is not subject to the vagaries of imprecise, personal reporting.

TABLE XIV
ACADEMIC STANDING-1st YEAR
BY CLEO INSTITUTE ATTENDED

INSTITUTE SCHOOL	IN GOOD STANDING No. & % of Institute	IN LESS THAN GOOD STANDING No. & % of Institute	Total and % of Total Survey
1968 UCLA	19 90.5%	2 9.5%	21 3.1%
1968 U. Denver	18 85.7%	3 14.3%	21 3.1%
1968 Emory U.	15 75.0%	5 25.0%	20 2.9%
1968 Harvard U.	13 100.0%	0	13 1.9%
1969 U. Cincinnati	15 93.8%	1 6.3%	16 2.3%
1969 U. Denver	18 94.7%	1 5.3%	19 2.8%
1969 U. Iowa	21 84.0%	4 16.0%	25 3.7%
1969 Loyola U.-LA	16 94.1%	1 5.9%	17 2.5%
1969 New York U.	23 82.1%	5 17.9%	28 4.1%
1969 Duke U.	12 80.0%	3 20.0%	15 2.2%

TABLE XIV (cont'd)

INSTITUTE SCHOOL	IN GOOD STANDING No. & % of Institute	IN LESS THAN GOOD STANDING No. & % of Institute	Total and % of Total Survey
1969 U. San Francisco	15 93.8%	1 6.3%	16 2.3%
1969 Southern U.	15 88.2%	2 11.8%	17 2.5%
1969 U. Toledo	5 50.0%	5 50.0%	10 1.5%
1969 U. Virginia Charlotte	15 83.3%	3 16.7%	18 2.6%
1969 Wayne St. U.	14 56.0%	11 44.0%	25 3.7%
1970 Arizona State U.	14 82.4%	3 17.6%	17 2.5%
1970 U. Houston	13 92.9%	1 7.1%	14 2.0%
1970 Howard U.	15 100.0%	0	15 2.2%
1970 U. Miami	9 90.9%	1 10.0%	10 1.5%
1970 Temple U.	8 88.9%	1 11.1%	9 1.3%
1970 U. Washington	5 100.0%	0	5 0.7%
1970 Wayne State U.	19 86.4%	3 13.6%	22 3.2%
1971 U. California-Davis	5 83.3%	1 16.7%	6 0.9%
1971 U. Denver	7 77.8%	2 22.2%	9 1.3%
1971 U. Florida-Gainesville	14 87.5%	2 12.5%	16 2.3%
1971 Howard U.	9 90.0%	1 10.0%	10 1.5%
1971 St. Louis U.	10 90.9%	1 9.1%	11 1.6%
1971 Texas Tech U.	6 66.7%	3 33.3%	9 1.3%
1971 Tulane U.	4 100.0%	0	4 0.6%

TABLE XIV (cont'd)

INSTITUTE SCHOOL	IN GOOD STANDING No. & % of Institute	IN LESS THAN GOOD STANDING No. & % of Institute	Total and % of Total Survey
1972 U. Arizona	8 88.9%	1 11.1%	9 1.3%
1972 U. California-Davis	10 83.3%	2 16.7%	12 1.8%
1972 Howard U.	13 92.9%	1 7.1%	14 2.0%
1972 U. Kentucky	10 90.9%	1 9.1%	11 1.6%
1972 U. Oregon	4 100.0%	0	4 0.6%
1972 U. South Carolina	7 63.6%	4 36.4%	11 1.6%
1973 Arizona St. U.	12 92.3%	1 7.7%	13 1.9%
1973 U. California-Hastings	7 100.0%	0	7 1.0%
1973 Florida St. U.	12 92.3%	1 4.4%	13 1.9%
1973 U. Houston	5 100.0%	0	5 1.2%
1973 Howard U.	8 100.0%	0	8 1.2%
1973 Indiana U.	8 88.9%	1 11.1%	9 1.3%
1973 U. Washington	5 83.3%	1 16.7%	6 0.9%
1974 U. Florida-Gainesville	6 100.0%	0	6 0.9%
1974 U. New Mexico	7 100.0%	0	7 1.0%
1974 Notre Dame U.	11 84.6%	2 15.4%	13 1.9%
1974 U. Santa Clara	9 8.18%	2 18.2%	11 1.6%
1974 Seton Hall U.	8 88.9%	1 11.1%	9 1.3%
1974 U. Washington	5 83.3%	1 16.7%	5 0.9%
1974 College of William & Mary	12 100.0%	0	12 1.8%

TABLE XIV (cont'd)

INSTITUTE SCHOOL	IN GOOD STANDING No. & % of Institute	IN LESS THAN GOOD STANDING No. & % of Institute	Total and % of Total Survey
1975 Boston College	7 100.0%	0	7 1.0%
1975 U. Houston	6 85.7%	1 14.3%	7 1.0%
1975 U. Richmond	11 91.7%	1 8.3%	12 1.8%
1975 U. Santa Clara	3 100.0%	0	3 0.4%
1975 Seton Hall U.	6 85.7%	1 14.3%	7 1.0%
1975 U. Utah	8 100.0%	0	8 1.2%
1975 U. Wisconsin	11 91.7%	1 8.3%	12 1.8%
1976 Temple U.	3 100.0%	0	3 0.4%
TOTALS	594 87.0%	89 13.0%	683 100.0%

Number of Missing Observations=7
NOTE: Percentages may not always sum to 100.0% due to rounding error.

B. Bar Passage/Law School Attended

As noted earlier, bar examination performance is viewed by many as an essential factor in determining the viability of affirmative admission programs, the policy rationale for the creation of many of these programs having been the gross underrepresentation of minority group presence in the bar. In an effort to ascertain whether the overall success of CLEO Fellows on the bar examination would remain consistent when analyzed in the context of a particular law school's graduates, an additional cross-tabulation of data was conducted pitting the individual law school attended by CLEO Fellows against the variable of bar performance.

The law schools listed in Table VII as representing those schools with at least ten graduates responding to the survey were again chosen. For the purpose of this analysis, bar passage was quantified not by the number of individual sittings, but rather by a more general category of bar passage, "at any time." In creating the more general category, it was assumed that the ultimate passage of the bar is the more important consideration when compared with whether an applicant passed on the first, second or third attempt; although it should be noted that the substantial majority of CLEO Fellows passed the bar examination on the first or second effort.

A total of twenty-six (26) law schools were involved in this analysis, representing 59.6% of CLEO Fellows surveyed or 401 of 673 valid cases. Of the twenty-six schools represented, fifteen (15) achieved a ninety percent (90%) or better rate of their graduates having successfully negotiated the bar; an additional seven (7) schools' graduates achieved a bar passage rate of eighty percent (80%) or better. The average total rate of bar passage for all CLEO Fellows surveyed was eighty-seven and one-half percent (87.5%) or 589 of the 673 valid cases.

Again, several points of interest should be noted when reviewing the following Table: First, the frequency of returns is particularly well distributed, thereby, helping to reduce concern regarding a potentially disparate or aberrational sample. Secondly, the law schools involved, and presumably the bar examination as well, reflect a broad geographic range. This factor alone helps to insure the truly national character of the data. Third, in spite of the random nature of the rate of bar passage, given the number of classes involved and the differing jurisdictions in which candidates sat for the examination, the percentage of those individual candidates who passed a bar examination remained remarkably consistent across the individual schools.

TABLE XV
BAR PERFORMANCE OF CLEO FELLOWS
BY LAW SCHOOL ATTENDED

LAW SCHOOL	PASSED A BAR EXAM No. & % of school's CLEO Fellows	FAIL/NO PASS REPORTED No. & % of school's CLEO Fellows	Total and % of Total
U. California-Berkeley	10 83.3%	2 16.7%	12 1.8%
Columbia U.	10 90.9%	1 9.1%	11 1.6%
U. Florida-Gainesville	11 100.0%	0	11 1.6%

TABLE XV (cont'd)

LAW SCHOOL	PASSED A BAR EXAM No. & % of school's CLEO Fellows	FAIL/NO PASS REPORTED No. & % of school's CLEO Fellows	Total and % of Total
Harvard U.	10 90.9%	1 9.1%	11 1.6%
U. Miami	11 100.0%	0	11 1.6%
Rutgers U.-Newark	11 100.0%	0	11 1.6%
U. California-Hastings	9 90.0%	1 10.0%	10 1.5%
U. Houston	10 100.0%	0	10 1.5%
U. Illinois	14 87.5%	2 12.5%	16 2.4%
Texas Southern U.	14 93.3%	1 6.7%	15 2.2%
Georgetown U.	14 100.0%	0	14 2.1%
U. Arizona	12 92.3%	1 7.7%	13 1.9%
George Washington U.	12 92.3%	1 7.7%	13 1.9%
U. Southern California	11 84.6%	2 15.4%	13 1.9%
Temple U.	12 92.3%	1 7.7%	13 1.9%
Arizona State U.	9 75.0%	3 25.0%	12 1.8%
U. Denver	23 71.9%	9 28.1%	32 4.8%
U. New Mexico	25 89.3%	3 10.7%	28 4.2%
U. California-Los Angeles	17 68.0%	8 32.0%	25 3.7%
U. Virginia	20 87.0%	3 13.0%	23 3.4%
U. California-Davis	15 71.4%	6 28.6%	21 3.1%
Wayne State U.	20 95.2%	1 4.8%	21 3.1%
U. Texas	18 100.0%	0	18 2.7%
Howard U.	15 88.2%	2 11.8%	17 2.5%

TABLE XV (cont'd)

LAW SCHOOL	PASSED A BAR EXAM No. & % of school's CLEO Fellows	FAIL/NO PASS REPORTED No. & % of school's CLEO Fellows	Total and % of Total
Notre Dame U.	10 100.0%	0	10 1.5%
U. Santa Clara	8 80.0%	2 20.0%	10 1.5%
TOTALS	589 87.5%	84 12.5%	673 100.0%

Number of missing observations=17

NOTE: Percentages may not always sum to 100.0% due to rounding error.

VIII. CAREER PATTERNS

Legal education was perhaps the first professional discipline to respond to the demand for broader opportunities for politically and economically disenfranchised groups. The early organized efforts of the law schools to address the need for structured affirmative action reflect the intense interest of members of minority groups in the law as a tool for "social engineering" and societal decision-making, as much as they reflect the social conscience of the profession.

To the extent that the ultimate *raison d'etre* of any affirmative admission program in law schools is to increase access to the decision-making process of both the private and governmental sectors by members of disadvantaged groups, the career patterns of successful graduates of these programs may be the most significant measure of the success of affirmative admissions.

The assumption that minority group lawyers would return to assist indirectly minority communities has long been one of the unvalidated considerations which served to undergird principles of affirmative admissions in legal education. In both the *DeFunis* and *Bakke* challenges to affirmative admissions, the factor of additional community service to underserved minority communities was proffered as a principal justification for the continued need for such programs. However, because this assumption has remained, for the most part, unvalidated through lack of concrete documentation, the Supreme Court has been reluctant to accept this rationale at first glance.

The CLEO survey sought to shed some light on this question. Questionnare returns provided career patterns data on 305 CLEO Fellows or 21.6 percent of those candidates eligible to respond. Although by no means complete, the career patterns of CLEO Fellows is particularly interesting when viewed in the context that, but for CLEO, many of these attorneys would have been denied access to a legal education.

It is interesting to note as well that the career activities of CLEO Fellows extend well beyond the exclusive interests (as traditionally defined) of minority communities, reflecting a job dispersal and diversity of interest of considerable breadth; in reality, minority interests have never been monolithic or one-dimensional.

The following Table provides data on CLEO Fellows' employment and career activities as of 1978-1979.

TABLE XVI

Judges	
Administrative Law	3
Municipal	1
State District	2
County District Court	1
U.S. Bankruptcy Court	1
Legal Education	
Professors (Non-tenured)	4
Professors (Tenured)	1
Associate Deans	1
Associate Director - CLEO	1
Elected Officials	
State Representative	1
Full-Time Graduate School	
Candidates for LLM	1
Candidates for SJD	1

*Part-time Graduate School

Candidates for LLM	3

Undergraduate Education

Professors	5
Deans	1
Special Assistant to the Chancellor	1
Director of Fundraising for Private University	1
General Counsel for University Students	1

Attorneys in Public Sector

Assistant Prosecutors	3
City Attorneys	11
State District Attorneys	10
Federal Agencies (Administration)	1
Federal Agencies (Litigation)	25
Judge Advocates General Corps (Military)	3
Judicial Law Clerks	3
Executive Directors, Legal Services	4
Managing Attorneys, Legal Services	7
Staff Attorneys, Legal Services	32
Municipal Government (Administration)	1
Municipal Government (Litigation)	3
Municipal Government (Executive Director)	4
Public Defenders (State & Federal)	11
Public Interest Organizations (Administration)	5
Public Interest Organizations (Litigation)	1
Office of State Attorneys General	15
State Government (Administration)	2
State Government (Litigation)	11
Office of U.S. Attorney	11

Private Sector

Congressional Aides (House of Reps.)	1
Congressional Aides (Senate)	2
Corporate Practice (Litigation)	22
Corporations, Banks, Insurance Companies Accounting firms, et.al. (Administration)	5
Entrepreneur (Owner of a Real Estate firm)	1
Law Clerk	2

Partner in a Law Firm (3 or more partners in firm)	17
Private Practice (Sole Practitioner or partnership)	57
Staff Attorney in a Law Firm (3 or more partners in firm)	7
Staff Attorney in a Small Law Firm	1
Total	305

* Note: Part-time candidates are reflected only once in the total.

IX. CONCLUSION

It has been over two years since the United States Supreme Court rendered its opinion in *Bakke*. During the ensuing period, educators, test specialists, legislators and representatives of interests groups which were organized in response to *Bakke* have sought to influence, in various forums, legal education's collective response to the mandates of *Bakke*; as a legal question, *Bakke* was resolved by the Court, and the central issues remaining were shifted to the political arena.

Many assumed that the Court's decision would bring about substantial alteration to affirmative admissions; and notwithstanding the Court's affirmation that race could be used as a possible criterion in the admissions process (within defined parameters), there was fairly widespread concern, at least among some members of minority groups, that perceptible decreases in enrollment of these groups would occur. In this respect, *Bakke* appears to have had little direct impact on the enrollment patterns of minority group students in legal education.

In an article which assesses the status of affirmative admission programs in law schools one year after the *Bakke* decision, Judge Henry Ramsey, Jr., President of CLEO and Chairman of the ABA Committee on Law School Accreditation, has established through an analysis of law school enrollment data and a survey questionnaire to ABA-accredited schools that little has changed (numerically) in the actual admission of minority group students to law school.

Yet, *Bakke* left an indelible imprint on the admission policies of law schools, while simultaneously focusing America's attention on the importance of higher eduction as a gatekeeper of meaningful political and economic decision-making; the public's awareness of the political side of meritocratic admissions selection has been heightened.

Several policy questions which were posed by *Bakke*, but which received scant attention by the Court, are now being explored more fully. The use, impact and validity of standardized testing in all areas has been raised to a matter of national concern. Already, several states have enacted legislation affecting changes in the reporting requirements associated with several standardized tests.

Perhaps of greater significance have been attempts by several law schools to concretize affirmative admissions policies in response to *Bakke* in ways designed to insulate these programs from legal and political attack. The *Law School Admission Study*, prepared by Susan Brown and Edward Marenco of the Mexican-American Legal Defense and Education Fund (MALDEF), analyzes a variety of workable admissions models which are structured to achieve this purpose. The recent adoption of an affirmative action accreditation standard (Standard 212) by the American Bar Association pursuant to a recommendation of the ABA Section on Legal Education and Admission to the Bar can be viewed as a further extension of the "shield" concept as it applies to voluntary affirmative action efforts.

An additional and important element which appeared woven in the fabric of *Bakke* was the need for an alternate measure of the performance potential of disadvantaged applicants to law schools which, itself, could be supported through actual performance-related data. Of course, this alternate evaluation of performance would be used to moderate the over-reliance on LSAT and UGPA data alone. From the foregoing analysis of the performance data gathered on CLEO Fellows, it appears that the CLEO experience, when used on conjunction with quantifiable variables, may well be the most solidly-based evaluation measure available.

The success of CLEO Fellows in law school and on the bar examination cannot be divorced entirely from a comparison of similarly-credentialed, non-CLEO students. While little comparative data similar in scope and kind is available, all reasonable conclusions lead to substantially improved performance by CLEO-trained students.

A restatement of the statistics of achievement by Program Fellows would be superfluous; however, suffice it to say that by any measure they are impressive. When one takes into consideration the national scope of the data and the magnitude of the sample involved, it becomes increasingly difficult to attribute this performance to isolated variables having little common impact on the entire class.

Because CLEO also enjoys unique institutional sponsorships and federal support, the program may well represent one of the most acceptable policy responses to the dilemma posed by *Bakke*; already several law schools have endorsed CLEO participation as a positive consideration in the admission process.

In the final analysis, the performance of CLEO Fellows speaks for itself.

NOTES

1. 438 U.S. 265 (1978).

2. 347 U.S. 483 (1954).

3. *Bakke, supra* note 1, at 338.

4. W. Wilson, *The Declining Significance of Race* (1978).

   Clark and Gershman, "The Black Plight: Race or Class?", *The New York Times Magazine* (October 5, 1980); Williams, "Racial Reasoning in Unfree Markets — Preference, Prejudice, and Difference", *Regulation* (March/April 1979).

5. The 1970 Census of the Population established the total Black population at 22,539, 362 or 11% of the total population; Spanish surnamed Americans were figured at 9,294,509 or 4.5% of the total. United States Department of Commerce, 1979 Census of Population (1972). Although improved, significant underrepresentation of various minority groups is still reflected in the enrollment figures for various disciplines: Law, See ABA Section of Legal Education and Admissions to the Bar, *A Review of Legal Education in the United States — Fall, 1979* (1980) [hereinafter cited as *Legal Education*]; Medicine, See AAMC, Minority Student Opportunities in the United States Medical Schools 1980-81 (1980); AAMC, *Medical School Admission Requirements 1980-81* (30th ed. 1979); Engineering, See Smith, "Minorities in Engineering: A Five Year Progress Report," *Engineering Educ.* (Nov. 1977); Business, See American Assembly of Collegiate Schools of Business, *Enrollment Trends Survey with Minority Data* (1979).

6. *Id.*

7. *Legal Education, supra* note 6, at 60-61; *Minority Student Opportunities in United States Medical Schools, supra* note 6, at 254-58; *Medical School Admission Requirements 1980-81, supra* note 6, at 24, 54; "Minorities in Engineering," *supra* note 6, at 1-3; *Enrollment Trends Survey with Minority Data, supra* note 6 at 1, 13, 26.

8. *Legal Education, supra* note 6, at 63.

9. *Hearing on H.R. 13172 before the Subcommittee of the Committee on Appropriations, United States Senate*, 94th Cong., 2nd Sess. 465 (1976) (statement of Richard G. Huber on behalf of the Council on Legal Education Opportunity) [hereinafter cited as *1976 Hearings*].

10. *Legal Education, supra* note 6, at 60-64.

11. 416 U.S. 312 (1974).

12. See *Legal Education, supra* note 6, at 60-64.

13. *Id.*

14. See *Legal Education, supra* note 6, at 60-64.

15. *Bakke, supra* note 1; *DeFunis, supra* note 11; *Flanagan v. President of Georgetown College*, 417 F. Supp. 377 (D.D.C. 1976); *DeRonde v. Regents of the*

Univ. of Cal., S.F. 24145 (Feb. 11, 1981); *Alevy v. Downstate Medical Center*, 384 N.Y.S. 2d (1976). The ABA reviewed a resolution addressing the issue of "reverse discrimination" designed to eliminate race as a factor in the admission process. The resolution was referred to the Section of Legal Education and Admissions to the Bar by the general assembly and the House of Delegates at the 1976 annual meeting and read as follows:

> Whereas, minority admissions programs have been experimented with by some law schools, and
>
> Whereas, applicants with high academic qualifications now claim that they are being excluded by reason of such experimentation, and
>
> Whereas, the Association's Standards for the Approval of Law Schools specificially require that:
>
> > the law schools shall maintain equality of opportunity in legal education without discrimination or segregation on the ground of race, color, religion, national origin, or sex.
>
> Be It Resolved, that the Section of Legal Education and Admissions to the Bar is requested to investigate this matter and report its findings and recommendations to the House of Delegates at the 1977 annual meeting.

16. See *Legal Education, supra* note 6.

17. *Legal Education, supra* note 6, at 5-53. (Please note no approval dates appeared for the following, recently approved schools:)

    University of Bridgeport (1979)
    Northern Illinois University (1978)
    Campbell University (1979)

18. See: Franklin R. Evans, *Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976* (May 1977) [hereinafter cited as *1976 Law School Admission Research Report*]. Summarizing various data tables, the Report observes that:

> a) women and men score about equally on LSAT, b) women tend to present higher undergraduate grades than men, and c) women are offered admission at a slightly higher rate than men.
>
> The last observation, that women are more often offered admission is probably a function of their superior undergraduate records. The acceptance rates. . .are higher for women at or above various LSAT score levels than for men. However, when the combination of UGPA and LSAT are considered, the acceptance rates for men and women are equal. Thus, the data indicates that men and women with similar LSAT and UGPA data are being equally treated in the law school admissions process. The equality of the sexes in terms of LSAT scores has been demonstrated elsewhere (Cowell and Swineford, 1972). Also, the observation that women present undergraduate records that are on the average substantially higher than men is not surprising, since this phenomenon has been observed in a number of contexts. (See, for example, Baird, 1969) at 26-27.

19. *Bakke, supra* note 1, at 320.

20. *Equality and Preferential Treatment* (M. Cohen, T. Nagel and T. Scanlon, eds. 1977) at 65; Caress, *The Myth of Reverse Discrimination: Declining Minority Enrollment in New York City's Medical Schools* (1977) at 6, 8.

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21. The Council on Legal Education Opportunity was established in 1967 to enlarge the ranks of lawyers coming from minority groups or low-income backgrounds; the responsibility was assumed jointly by the American Bar Association (ABA), the Association of American Law Schools (AALS), the National Bar Association (NBA), and the Law School Admission Council (LSAC). See *Minutes of December 5, 1967 Conference at OEO on Legal Education for Disadvantaged Groups.*

22. *CLEO Participant Data Report* (1979), *infra,* at Table

23. CLEO filed an *amicus* brief in the *Bakke* litigation setting forth the academic achievements as well as preliminary bar performance of CLEO Fellows, the vast majority of whom were admitted under special admission programs notwithstanding significantly lower LSAT scores than those attained by regular admittees. See Brief for Petitioners. The Court failed to address the implications raised by the data.

24. *Minutes of December 5, 1967 Conference, supra* note 20; See *Minutes of October 22, 1972 CLEO Council Meeting* at which La Raza National Lawyers Association's application for participation on the Council as a constituent organization was accepted unanimously.

25. *All About CLEO* brochure (1980-81 ed.) at 2-8.

26. *Sweatt v. Painter*, 339 U.S. 629 (1950); See Washington, "History and the Role of Black Law Schools," 18 How. L.J. 385 (1974). The underrepresentation of minority group lawyers and law students was well accepted in 1968, but it took the 1970 census to graphically portray the scarcity of minority lawyers. In 1970, it was estimated that total bar membership reached 272,401 lawyers of which 3,685 were Black or members of Spanish-speaking ethnic groups. United States Department of Commerce, 1970 Census of Population (1972); 1967 Proceedings of the Association of American Law Schools, *Report of the Advisory Committee for Minority Groups Study* 1, (1967); see also *1976 Law School Admission Research, supra* note 18, at 7.

27. *1976 Law School Admission Research, supra* note 18, at 1-8.

28. *All About CLEO* brochure, *supra* note 24, see *CLEO Reports* (1968-1979).

29. *Higher Education Act of 1965, as amended,* 20 USC. Sec. 1134 (1980).

30. CLEO, *DeFunis v. Odegaard and the University of Washington: The University Admissions Case,* (A. Ginger ed. 1974).

31. CLEO, *Allan Bakke v. Regents of the University of California* (A. Slocum ed. 1978).

32. "Advancing Legal Education — The First Decade of CLEO, 1968-1978: A Symposium to Commemorate the Tenth Anniversary of the Council on Legal Education Opportunity," 22 How. L.J. (1979).

33. *1976 Hearings, supra* note 9, at 471.

34. *Id.*, at 467.

35. *All About CLEO* brochure, *supra* note 24, at 3; See *Detailed Comparison of the*

1980 CLEO Regional Summer Institute Participants (December 1980) at Table VIII; *1979-80 Program Recruitment and Admissions* (May 1980) at Table VIII.

36. *Id.*

37. Memorandum to Law School Deans and Other Interested Persons from Wade J. Henderson, Executive Director, *Sponsorship of CLEO Regional Summer Institutes in the Summer, 1981* (Septemer 30, 1980) at 6; *CLEO Reports* (1968-1979).

38. Each year, the CLEO National Office compiles relevant statistical data on the Program's participants. The available data is then synthesized by CLEO's Admissions Analyst and the cumulative data is provided in the "CLEO Participant Data Report."

39. Memorandum from Franklin R. Evans, *LSAT Score Distribution*, (December 5, 1980). This figure constitutes the mean LSAT score for the October 1980 LSAT administration. The mean score for previous 1980 administrations is as follows: February 1980-520.0; April 1980-514.2; and June 1980-552.9.

40. See, *Parrish v. Board of Comm'rs of the Alabama State Bar*, 533 F 2d 942 (5th Cir. 1976) (summary judgment reversed and remanded to permit plaintiffs to complete discovery); *Murry v. The Supreme Court, State of Arizona*, No. 72-2101 (9th Cir., Aug., 1973) (dismissal of claim that bar exam was racially discriminatory); *Petit v. Gingerich*, No. 72-964-B (D. Md., Feb. 22, 1977) (defendant's motion for summary judgment granted); *Woodward v. Virginia Board of Bar Examiners*, No. 75-0437-R (D. Va., Sept. 9, 1976) (summary judgment indicating that Title VII of the Civil Rights Act of 1964 does not apply to the Virginia bar examination system); *Pacheco v. Pringle*, No. C-5219 (D. Colo., May 20, 1976) (action challenging constitutionality of bar examination system dismissed with prejudice); *Lewis v. Hartsock*, No. 73-16 (S.D. Ohio, Mar. 9, 1976) (summary judgment granted defendants) *appeal docketed*, No. 76-1884 (6th Cir. July 2, 1976); *Carlock v. EEOC*, No. 74-365 (D. Ariz., Sept. 30, 1974 (motion for declaratory judgment that EEOC has no jurisdiction dismissed without prejudice); *Metropolitan Comm. for the Investigation of the D.C. Bar v. Committee on Admissions*, No. 74-177 (D.D.C., Jan. 30, 1974) (dismissed without prejudice); *North Carolina Ass'n of Black Lawyers v. Board of Law Examiners*, No. 4488-1973 (D.N.C., filed Nov. 1, 1973); In *re Illinois Bar Examination*, No. 1-576 (Ill. Sup. Ct., Mar. 21, 1975) (denial of petition requesting court to appoint a commission to develop bar exam which does not have disproportionate racial effect).

41. Truly comparative bar performance data which would permit a direct analysis between CLEO and non-CLEO graduates has been difficult to obtain. First, the state Boards of Bar Examiners do not maintain data on bar performance by race. Secondly, the CLEO data extends over several classes and through several years presenting only a limited basis for direct comparison with national figures from year to year. However, were one to analyze national bar data between 1971 and 1976 as a total pool, a national passing rate of 74% would be derived.

    The 74% figure compares favorably to the CLEO bar passage rate of 73.9%. Like the CLEO data, the national figure includes those candidates who are repeaters in the total figures analyzed:

ADMISSION TO BAR BY EXAMINATIONS: 1970-1976

Year	Total Taking	Total Passing	% Passing	Total Passing ABA Approved Law Schools	Total Passing by Law Office Study	Unaccredited Schools
1971	27,904	20,004	72%	15,767	5	367
1972	32,916	24,447	74%	17,736	9	136
1973	39,508	29,903	76%	24,722	7	642
1974	43,798	33,358	76%	27,329	4	882
1975	46,414	34,144	74%	27,289	13	1,482
1976	49,099	34,951	70%	27,232	19	1,514
Totals	239,639	176,807	74%	140,075	57	5,023

National Conference of Bar Examiners (1972-1977). The material presented above is compiled from volumes 41-96, Nos. 5-6 at the following pages:
Vol. 41, at 126-29
Vol. 42, at 126-29
Vol. 43, at 110-13
Voi. 44, at 114-17
Vol. 45, at 94-97
Vol. 46, at 155-55

An Investigation into the Validity and Cultural Bias of the Law School Admission Test

David M. White, *National Conference of Black Lawyers*

Final Report
March 31, 1980
under NIE-G-79-0079

The project reported herein was performed pursuant to a grant from the National Institute of Education, Department of Health, Education and Welfare. However, the opinions expressed herein do not necessarily reflect the position or policy of the National Institute of Education, and no official endorsement by the National Institute of Education should be inferred.

SUMMARY

This Report investigates the validity and bias of the Law School Admission Test (LSAT) because all law schools accredited by the American Bar Association are required to use the LSAT in their admissions process. It is possible that the admission opportunities of minority applicants are being unfairly circumscribed because of the low validity and cultural bias of the LSAT. An audience of law school admission officials, lawyers, law students and faculty members should find this Report useful in formulating admission policies which will enhance the equity of access by all groups to legal education opportunities.

An Admission Index, based on a combination through a formula of an applicant's LSAT score and Undergraduate Grade Point Average (UGPA) is normally assigned to each law school applicant. This Index ultimately becomes the primary determinant of an applicant's admission opportunities.

The Index does not have high validity in predicting performance in law school. It is virtually useless in identifying law school dropouts. Its primary rationale has been the prediction of the relative grades of students after their first year of law school. Yet most of the variation in law school grades remains unexplained by relative Index numbers. Restriction of range in the abilities of law students has been frequently mentioned as a justification for low correlation coefficients. However, an additional problem—the prevalence of discrepant predictors within the student body—has been identified as the primary determinant of the relative predictive validity of the Index numbers at various law schools.

Since discrepancies between LSAT scores and UGPA are an important problem in law school admissions, the relative validity and bias of each prerequisite was reviewed. College grades have the most content validity, since earning college ad law school grades involves many of the same skills and habits. Common claims that grade inflation or the variety of courses and colleges make grades unreliable predictors were not borne out by the evidence. Of primary concern is the clear pattern indicating that UGPA has considerably less discriminatory impact against minority applicants to law school than do LSAT scores.

The greater discriminatory impact of the LSAT prompted an inquiry into the possible sources of lower scores of minority applicants. The content of certain test sections is of questionable relevance to the daily practice of many attorneys and the overall speed pressures of the test may impair its validity. In addition, the Report identifies a number of potentially biased questions in the publicly disclosed sample LSAT distributed to candidates. The presence of these questions in a publicly disclosed sample LSAT raises the inference that the discriminatory impact of the LSAT is due to cultural bias in the test.

Since the LSAT has a greater discriminatory impact than UGPA, combining the two prerequisites into an Index number affects the admission opportunities of minority applicants. Various destabilizing elements affect the combination from year to year and school to school. A national trend is evident whereby ever-increasing weight has been placed on the LSAT in Index numbers in recent years. This trend decreases the admission opportunities of minority applicants and may substitute prejudicial stereotypes with equally discriminatory prediction formulas.

The typical criterion of first year law school grades is reviewed for validity and bias. Law school is under heavy criticism for its teaching methods and course content. Law school examination grades are quite unrelated to LSAT scores. Minority law students experience additional pressures due to lingering stereotypes about the intellectual ability of certain racial groups.

This Report reviews possible adjustments in admission prerequisites for minority applicants. Two adjustment models, developed by Robert L. Thorndike and Nancy Cole, can be applied to both LSAT scores and UGPA to accomodate minority applicants who are disadvantaged by the low predictive validity of these prerequisites. In addition, the LSAT scores of minority applicants could be further adjusted to account for cultural bias in the test. Separate evaluation committees for majority and minority applicants could be used to compare candidates from different cultural backgrounds. Finally, the suggestion is made that law schools be given the option of disregarding the LSAT during the admissions process, an option not now available under the American Bar Association's accreditation standards.

Gaps in previous research have suggested a variety of future research needs. Questions already examined as a result of this investigation include the relationship between UGPAs earned at the same undergraduate institution and LSAT scores of various racial and ethnic minority groups; the pattern of grade distributions at various types of undergraduate institutions, including traditionally and predominantly black colleges; and the success of students participating in the Council on Legal Education Opportunity's (CLEO's) summer institutes. Each of these areas deserves additional analysis. Additional research should be conducted to learn why minority students answer certain LSAT questions incorrectly, preferably after interviews with candidates completing a form of the LSAT. In addition, research into the possible content bias in law school examinations should be pursued, since anecdotal evidence indicates that some law school examination questions are unnecessarily discriminatory and inflammatory to minority law students and that grading procedures fail to insure a race-blind grading process. Finally, the cumulative impact of differential test preparation, test-wiseness, anxiety levels and reactions to speed pressures on the scoring patterns of various groups should be determined. Previous research has attempted to isolate each of these factors rather than to determine the cumulative impact of these interrelated factors on test score patterns.

I. Bakke Without Adjustments of Admissions Criteria

The Supreme Court's decision in the case of *Regents of the University of California v. Bakke*[1] has prompted law schools to review their admissions policies. Many direct their attention to the opinion of Mr. Justice Powell which rejected a justification for race-conscious admissions procedures based on a need to counter the effects of societal discrimination and approved the consideration of race to ensure a "diverse" student body. Powell rejected the "societal discrimination" justification because it is "an amorphous concept of injury that may be ageless in its reach into the past."[2] He accepted the notion that diversty in the student body is an element of "academic freedom"[3] while noting that race is but one element which may be considered in attaining a truly diverse student body.[4]

Powell referred to descriptions of policies followed at Columbia, Harvard, Stanford, Pennsylvania and Princeton universities[5] and to an article by Winton H. Manning[6] as examples of his concept of a constitutionally permissible admissions policy which included consideration of race and ethnic background. The universities' programs make no explicit reference to adusted admissions criteria for candidates from minority groups. Manning, the vice-president of the Educational Testing Service (ETS), states that no adjustments should be made.[7]

Mr. Justice Powell recognizes the difference between policies designed to achieve a diverse student body and those designed to adjust for admissions criteria which have low validity or cultural bias. He notes that the University of California did not seek to justify its race-conscious admissions procedures by relying on evidence that college grades and test scores were imperfect or biased indicators of merit. As Powell notes:

> Racial classifications in admissions conceivably could serve a fifth purpose, one which petitioner does not articulate: fair appraisal of each individual's academic promise in the light of some cultural bias in grading or testing procedures. To the extent that race and ethnic background were considered only to the extent of curing established inaccuracies in predicting academic performance, it might be argued that there is no "preference" at all. Nothing in this record, however, suggests either that any of the quantitative factors considered by the Medical School were culturally biased or that petitioner's special admissions program was formulated to correct for any such biases.[8]

Despite Powell's recognition of the potential effect that inaccurate or biased criteria have on the admission opportunities of minority applicants, there is the danger that schools seeking to comply with *Bakke* will themselves ignore issues of validity and bias in formulating their programs.

This report seeks to evaluate evidence which bears on the issue of validity and bias in admissions criteria. It is based on the plausible assumption that a program predicated on persuasive evidence would pass constitutional muster. This assumption was given force in the earlier case of *Defunis v. Odegaard* in which Mr. Justice Douglas indicated that imperfections in the LSAT could justify race-conscious admissions. Douglas indicated:

> My reaction is that the presence of an LSAT is sufficient warrant for a school to put racial minorities into a separate class in order better to probe their capacities and potentials.[9]

The permissible contours of race-conscious programs will be explored at the end of this report. The inquiry begins with an analysis of the elements of the current typical admission process.

A. Current Admission Policies

One facet of current law school admissions policies is mandated by the American Bar Association—the use of the LSAT. The ABA states that: "(a) law school which is not using the Law School Admission Test administered by Educational Testing Service should establish that it is using an acceptable test."[10]

The weight and interpretation accorded the LSAT in the admissions process is left up to individual schools. Law schools typically give considerable weight to an applicant's Undergraduate Grade Point Average (UGPA) in evaluating academic promise. A growing number of schools combine an applicant's LSAT score and UGPA into an "Admissions Index" for each applicant.[11] The Admissions Index usually is derived from a formula provided in a validity study report conducted by ETS for the school.[12] The formula may be based on a study of students' performance in the first year of study at that particular school, or may reflect student performance at many law schools which have had validity studies conducted by ETS.

Once each candidate is assigned an Admissions Index, that number becomes the primary determinant of admission to law school. As the former Director of Admissions of Harvard Law School admits: "in an admissions process such as ours where the number of highly qualified candidates greatly exceeds the number of candidates who can be admitted, the AI clearly establishes each candidate's odds for admission."[13] This is not to say that candidates are blindly reviewed by referring only to the Admissions Index. The "typical procedure used by some law schools is to place applicants into one of three groups based on a prediction index: a) presumptive admit, b) hold, and, c) presumptive deny."[14] Some law schools attach more than a presumption to very high or very low scores. "At one large university, the top ten percent of the applicant pool is accepted solely on the basis of grades and LSAT scores, and the bottom 40-50 percent is rejected on the same basis.[15] At another law school "[a]applicants scoring 600 or above on the LSAT and having undergraduate grade averages of 3.0 or better are admitted without Committee consideration: those with scores below 550 and grade averages below 2.5 are rejected without Committee consideration."[16]

Even schools which only attach presumptions to Admission Indices place heavy weight on these numbers during the admission process. "At most schools, once an applicant has been placed in either the probable acceptance or probable rejection group, the chances of his being dislodged are small."[17] Admissions committees typically probe for other factors upon which to base a decision among applicants in each subgroup. Thus, some with lower numerical qualifications will be accepted while some with higher numerical indicators will be rejected.[18] Even at Harvard Law School, which received more than 5,000 applications for the 1970-71 class of 550 students, the numerical indicators did not completely determine the admissions process.[19] Nevertheless, despite conscious efforts to ignore small differences in indices among applicants placed in the same subgroup, those with higher indices continue to have higher chances for admission.[20] The net result of this process at four law schools in 1970-71 was that the Admissions Index proved to be the most important factor determining chances for admission.[21] At one law school which did not use a well-defined system for 1970-71, UGPA and LSAT remained the two most significant factors determining admission, albeit independently of each other.[22] For all five schools in the study, the numerical indicators were better predictors of admissions opportunities than they were of performance in the first year of law school.[23]

Two major factors have contributed to the increasing emphasis on numerical indicators and admissions indices. The first is the well-known increase in law school applications. This increase has been somewhat offset by an increase in the number of places in first year law classes.

Yet, while the number of enrolled first year students doubled in the past 15 years, the number of persons taking the LSAT tripled.[24] The crush for acceptance has meant an increase in those rejected. At Harvard Law School, for example, half of the applicants were accepted during the 1950s, while approximately 13 percent wre accepted during the 1970s.[25] In 1973, every ABA-accredited law school rejected some candidates who were fully qualified to study law.[26] Faced with an increasing likelihood of rejection, applicants have submitted multiple applications at each law school and further reducing each student's chances for acceptance at their first choice school.[27] As a result, those accepted at every law school in 1976 had average LSAT scores that exceeded the average scores at 80 percent of the nation's law schools in 1961.[28]

This crush of applicants is beginning to dissipate. "A recent national survey of 40 law schools shows that applications for admission, after many years of steady increases, declined an average of 14 percent for entrance this fall."[29] Applications to Stanford Law School dropped 22 percent.[30] This drop in applications may be accompanied by a decrease in the average numerical indicators of applicants and students. This occured in medical school admissions between 1950 and 1955 as the flood of returning veterans seeking medical degrees subsided. "An undergraduate with a B+ average would have been only an average medical student in 1950, but in 1955 he would have been near the 75th percentile of this class."[31] The decline in application rates may encourage a retreat from mechanical admissions procedures.

The second factor is the increased involvement of the judiciary in the admissions arena. The *Bakke* case is but one example of this involvement. Others rejected by public *institutions may bring suit, without reference to racial* discrimination, and the public institution may nevertheless be asked to present clear reasons for its decision. This process was noted in an analysis of five law school admissions procedures in 1970-71. The one public law school, school C, felt pressure to adhere to numerical indicators. "Being a public institution, C feels strong pressure to make decisions based on objective factors which can be quantified in order to offer tangible justification for admissions decisions.[32] It is not clear that Mr. Justice Powell's deference to academic freedom will encourage public law schools to retreat from adherence to numerical indicators.

On the contrary, the Manning article cited with approval by Powell makes a strong plea for "Educational Due Process in Admissions"[33] which would require schools to clearly state their admission policies and provide rejected applicants with written reasons for their rejection.

The combination of these two factors—an abundance of applicants and a pressure for reviewable decisions—may mean an increasing reliance on numerical factors despite the fact that the level of grades and test scores may drop as application levels recede. The major countervailing pressure may be the search for diversity within the student body.

The very concept of diversity defies uniformity in the admissions decisions applied throughout the process. One law school studied made specific reference to the conscious inconsistency of its decisions, so that one factor did not dominate the process.[34] Yet these inconsistent decisions were made about students who were already placed in a subgroup after a rigid application of an admissions index to sort applicants. As described in the Manning essay, diversity should be sought in selecting those students to be admitted, but the selection of those who are admissible should be made without reference to background characteristics such as race.[35] Thus, although not all aspects of an admissions procedure seeking a diverse student body will be dominated by numerical factors, the initial sorting stage may become more dominated by the numbers.

The remainder of this report will explore the possibility that sorting applicants by Admission Indices will unfairly dilute the admission opportunities of applicants from minority groups. Put another way, the report will explore the question of whether numerical criteria are valid predictors of legal competence and whether they contain elements of culture. Applicants may have high Indices but little legal competence. Students may have high numerical indicators because of their whiteness rather than their brightness. If this is so, race-conscious evaluation of grades and test scores will not only be permissible under *Bakke*, it will be necessary to ensure a racially-neutral admissions policy.

NOTES

1. 438 U.S. 265 (1978).

2. Id. at 307 (Powell, J.).

3. Id. at 312.

4. Id. at 314; *accord, id.* at 236 (Brennan, White, Marshall, & Blackmun, JJ.).

5. Id. at 317 n. 51.

6. *Id.* citing Manning, "The Pursuit of Fairness in Admissions to Higher Education," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 19, 37 (1977).

7. Manning, "The Pursuit of Fairness in Admissions to Higher Education," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 19, 37 (1977).

8. 438 U.S. at 306 n. 43 (Powell, J.).

9. 416 U.S. 312, 335 (1974) (Douglas, J., dissenting).

10. American Bar Association, *Approval of Law School: Standards and Rules of Procedures,* Standard 503 (1973).

    See also Bylaws of the Association of American Law Schools, Inc., §6-2.a. "A member school shall employ admission standards designed to admit only those applicants who are adequately equipped for the study of law upon the basis of the undergraduate academic record, an admission test score, training, experience, and other indicia of aptitude for the study of law." (amended through January 5, 1980) in Association of American Law Schools, *Association Information* (1980).

11. In 1971-72, 25 schools used admissions indices and the number of schools using such formulas has increased in the years since. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2 Law School Admission Council, *Reports of LSAC Sponsored Researched: 1970-1974,* at 265, 308 (1972) (LSAC-72-7). (These *Reports* are compiled in a three-volume compilation wth volume 1 covering 1949-69, volume 2 covering 1970-1974, volume 3 covering 1975-1977. Hereinafter sources appearing in these volumes will be cited in a consistent format. For example, the previous sources would appear as 2 (LSAC-72-7) (1972).)

    During the 1979-80 processing year, 149 law schools had the Law School Data Assembly Service produce an admissions index. See letter of Franklin R. Evans, 4, March 4, 1980, reproduced in Appendix B to this report.

12. B. Pitcher, W. Schrader, & J. Winterbottom, *Law School Validity Study Service* 1 (1973).

13. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 21 (1979).

14. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3 (LSAC-77-1) at 551, 581 (1977).

15. Turnbull, McKee, & Galloway, "Law School Admissions: A Descriptive Study," in 2 (LSAC-72-7) at 265, 328 (1972).

16. *Id.*

17. *Id.* at 306.

18. Leonard, "Chairman's Annual Report on Minority Groups Association of American Law Schools," 4 The Black Law Journal 562 (1975).

19. Bell, "In Defense of Minority Admissions Program: A Response to Professor Graglia," 3 The Black Law Journal 241 (1973).

20. Turnbull, McKee, & Galloway, "Law School Admissions: A Descriptive Study," in 2 (LSAC-72-7) at 265, 284, 289 (1972).

21. *Id.* at 280, 288, 293, 302.

22. *Id.* at 297.

23. *Id.* at 306.

24. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3 (LSAC-77-1) at 551, 564 (1977).

25. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin, 14, 15-16 (1979).

26. Comment, "Racial Bias and the LSAT: A New Approach to the Defense of Preferential Admissions," 24 Buffalo L. Rev. 439, 439 n. 3 (1975).

27. Turnbull, McKee, & Galloway, "Law School Admissions: A Descriptive Study," in 2 (LSAC-72-7) at 265, 268-69 (1972).

28. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of National Datafor the Class Entering in the Fall of 1976," in 3 (LSAC-77-1) at 551, 572 (1977).

29. The State Bar of California, *Reports* 10 (May 1979).

30. *Id.*

31. L. Cronbach, *Essentials of Psychological Testing* 424-25 (3rd ed. 1969).

32. Turnbull, McKee & Galloway, "Law School Admission: A Descriptive Study," in 2 (LSAC-72-7) at 265, 292 (1972).

33. Manning, "The Pursuit of Fairness in Admissions to Higher Education," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 19, 41-44 (1977).

34. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2 (LSAC-72-7) at 265, 278 (1972).

35. Manning, "The Pursuit of Fairness in Admissions to Higher Education," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 19, 41-44 (1977).

II. Imperfect Predictive Validity

A. The Hypothetical Perfect Admissions/Prediction Process

If our goal were to perfectly predict the performance in the first year of law school of a group of applicants, the perfect solution would be a time-machine which would let us leap forward one year and actually discover the future. We could investigate several issues at once. We could identify those who passed and those who failed. We could examine the relative grades of those who passed, distinguishing those who excelled from those who barely passed. We could look at the factors which distinguished high grades from low grades from failing grades. We could look at the background characteristics of students earning various grades—their sex, race, social class, parents' education, etc.

Once we had made all the analyses we felt to be appropriate, our most challenging task would involve devising a set of factors which would perfectly "predict" the results we had just viewed. Ideally, consideration of all the factors would explain all of the variation in grades which we observed. Yet we would inevitably find that no set of factors completely explained the variation in grades. Luck would still play some role, as would other factors we may not be able to identify. More disturbingly, we may find that some factors predict performance, but we would recoil from using these in an admissions process. Some would raise constitutional issues, such as race; others would seem irrelevant, such as a student's height. Still other factors would be reasonably related to performance, but not easily identifiable in advance, such as a student's psychological reaction to the law school atmosphere.

A second solution would avoid all pretense of prediction, but would be fair to all applicants. We could admit all applicants and let them take first year law examinations. This was the procedure followed at Harvard Law School during the 1930s when one-third of the entering class failed the first-year examinations.[1] With today's crush for admissions, law schools do not feel they can afford the luxury of admitting students who will likely fail out of school and the abundance of qualified applicants makes it unnecessary to admit probable failures.

B. Actual Imperfect Admissions Process

Since humans are not prescient and resources are not infinite, law schools depend on admissions criteria which are admittedly imperfect. Preference is given to criteria which are verifiable, available from all candidates, and logically related to the study of law. This report focuses on UGPA and LSAT—the most important determinants of admission to law school. Those with high grades and test scores are likely to be admitted, those with low numbers are likely to be rejected.

Two types of errors result from an imperfect admissions process. The first type of error involves the rejection of those who would have succeeded in school if they had been admitted. Given a surplus of candidates who would succeed if admitted, this type of error is inevitable. The rejection of those who would have succeeded is known as a false-negative error. The second type of error involves the acceptance of students who eventually fail to meet academic standards. This type of error is less likely to occur when there is a surplus of qualified applicants. The acceptance of eventual failures is known as a false-positive error.

A third type of error will not affect the successful matriculation of students and it has no separate label in the testing literature. Nonetheless, it is the most prevalent type of error explored in the research reports. It involves the inaccurate ranking of admitted students on the basis of their Admission Indices. Students with high indices may earn lower grades than some students with lower Indices. Of course, one of the most obvious omissions of such an inquiry is analysis of the reasons why students drop out of law school, since only those completing the first year examinations are included in the ranking studies.

C. Predicting Law School Dropouts with Numerical Indicators

The problem of law school dropouts was once a serious one. Data analyzed in 1965 revealed that four out of every ten entering law students had failed to graduate from law school.[2] Some of these students did not meet academic standards, others left school for personal reasons, including financial pressures. During an era in which there were unfilled seats in law school, this attrition constituted more of a personal loss than a social one, since other aspiring lawyers were likely to be able to attend law school.

Today the problem of law school dropouts is less severe, but the social consequences are more significant. This is true regardless of the reason for withdrawal, since another applicant may have successfully completed law school. Emphasis on numerical criteria during the admissions process assumes that academic difficulties will produce dropouts. Yet those who drop legal studies for other reasons will be equally significant in denying an opportunity to study law to rejected candidates.

Remarkably few attempts have been made to investigate the relationship between numerical criteria and withdrawal from law school. One author found that in 1963 there was no statistical reltionship between UGPA or LSAT and withdrawal at three law schools and that at a fourth school those who left school had slightly higher qualifications than those who stayed.[3] In a replication study two years later the same author found that college grades did not predict withdrawal from law school and the LSAT was correlated with withdrawal at only two of the five schools studied.[4] Other studies have found relationships between LSAT scores and dropout rates. One study done in 1952 at one law school divided students into two groups with above or below average LSAT scores and found a .50 correlation with a first year pass/fail criterion and a .50 correlation with a three-year pass/fail criterion.[5] Two studies have divided withdrawing candidates into groups who withdrew for academic reasons and for other reasons. In 1962 those who withdrew from ten law schools for academic reasons had lower mean LSAT scores than those who withdrew for other reasons who in turn had lower scores than the scores of those continuing in good standing.[6] Students who entered law school in 1968 and 1969 showed some tendency to withdraw for academic reasons when they had lower LSAT scores.[7]

A more interesting phenomenon is the dropout rate for non-academic reasons. Among those entering in 1968 and 1969 there was no relationship between test scores and persistence in legal studies. "In some groups, the percentage of students with high standings on a predictor who withdrew for other than academic reasons was higher than the percentage for students in the middle or low group on the predictor."[8] One law school dean has offered an explanation for the dropout with high test scores. "Too frequently I have found that these students were pointed toward law study solely by virtue of a high score on the Law School Admission Test, having had little or no other drive to become a lawyer."[9] This suggests that too great an emphasis on the LSAT in admissions may be resulting in the selection of students who will drop out, while rejecting other candidates on the questionable assumption that they will perform unsatisfactorily if admitted.

Other factors have been identified with the tendency to withdraw from law school. One study has concluded that certain personality types are more likely to drop out of law school, regardless of their grades or test scores.[10] While one may be reluctant to select law students on the basis of personality type, the problem of withdrawal from law school among such students will remain if other criteria are compared during the admission process. Moreover, an effort to reduce the dropout rate from law school by preferring candidates with the highest grades and test scores may be misguided. Some students may have been falsely encouraged to enter law school solely because of their high test scores.

D. Predicting Relative Law School Grades with Numerical Indicators

The majority of statistical studies which have been conducted since the origin of the LSAT have involved analyses of the relationship between a weighted combination of UGPA and LSAT in a formula and the actual first-year grades earned by law students. The formula is usually derived from a regression analysis which identifies the best-weighted combination of the two predictors which will explain the variation in first-year grades. The product-moment correlation between the Index derived for each student from such a formula and that student's grades is considered to be evidence of the validity of the formula in predicting law grades. Thus, the statistical exercise is designed to compare predicted grades with actual grades of students who remain in law school until the end of the first year.

Throughout the history of the LSAT there have been a series of reports summarizing validity studies conducted at individual law schools. The summaries reflect considerable variation in the results obtained at individual schools, but the average results are considered representative of the trend in validity for prediction formulas. The average validity coefficients reported in these summaries are listed in Table 1.

TABLE I

Year	Average validity coefficient of weighted combination of Year UGPA and LSAT
1950[11]	.52
1956[12]	.58
1962[13]	.45
1965[14]	.39
1976[15]	.43

As can be seen, the apparent validity of the combination of LSAT and UGPA into a prediction formula has fluctuated considerably over the history of the LSAT. It should be recalled that each of these average validity coefficients reflects considerable variation among the validity coefficients reported at individual schools. Moreover, there is no discussion in these summary reports of the variation in weights assigned to the LSAT and UGPA individually in arriving at a combined formula for each school.

Nonetheless, Table I does indicate an appreciable drop in the validity of the combined formula since the inception of the LSAT. Two major explanations are available for this drop in apparent validity for the combined formula. One has received considerable attention in the published literature. The second has received recognition, but less emphasis, in the literature.

1. *Restriction of Range*

The first, widely discussed, problem with interpreting the apparent validity of predictors is known as "restriction of range." It occurs when a predictor is used to select students and later used in a validity study comparing the academic performance of admitted students with their predicted performance. Its effect on prediction of law school performance has been described in the following terms:

> As the volume of applications to law schools increases, the number of applicants having substantially equivalent qualifications becomes larger, and entering classes are composed mostly of persons with roughly the same LSAT scores and undergraduate grade averages. This narrow group is then required to account for the full range of grade variation in the first-year law school class, and subtle differences in admissions indices are expected to predict the first-year averages which particular applicants will achieve within that range of variations. Not surprisingly, admissions directors at many schools have found that, for the great majority of their students, grades and LSAT scores are not very closely related to actual first-year performance.[16]

Notice that this restriction of range effect involves the impact of using a test to select among *actual* applicants and later comparing accepted applicants' performance in law school. This restriction of range explanation for low reported validity coefficients should not be confused with the more sweeping infirmity of all predictors for graduate and professional schools. This general infirmity involves the fact that all *potential* applicants did not take the test and later enter law school. Usually, most potential applicants are excluded by a requirement that they have graduated from college. Yet, according to some who defend tests with low reported validities, the tests should nevertheless be regarded as valuable because their validities would have been higher if the entire population had taken them.[17]

The limited value of this more sweeping excuse for low validity coefficients can be appreciated by considering the possibility of selecting law students on the basis of a spelling test. While it may be possible to show that law students are better spellers than the average person between 22-27, it would not thereby justify using a spelling test to select law students. The fact is that most of the 22-27 age group is not able to apply to law school simply because a college degree is typically required. The problem a law school admissions official faces involves choosing among those who actually apply. The fact that a test gives little valid differentiation among these applicants cannot be excused because it would have given more differentiation among a more varied group, most of whom never took the test and would never apply to law school. A spelling test, like any test with low actual validity, is simply not that important in selecting law students. Once low validity is encountered, the task must be to evaluate other factors—not to place ever-increasing weight on the factor with low validity because it might have higher validity if used on a different population under different admissions circumstances.

Most statistical demonstrations of the restriction of range effect have concentrated on comparing the range of LSAT scores within an accepted student body either to the range of scores in other schools or to the range of scores in the original norming population which took the test in 1948. The range of UGPAs has not been the basis for restriction of range comparisons, partly because the range of UGPAs is normally not computed or reported.[18]

Recent literature has presented indications that schools with more variety among the LSAT scores of their student body, measured in standard deviations, will also have higher reported validity coefficients for the formula combining UGPA and LSAT as well as for UGPA and LSAT separately.[19] Earlier literature actually corrected the correlation coefficients actually obtained at individual law schools on the basis of restriction of range analysis. These LSAT adjustments were made on the assumption that the correct validity coefficients would appear if a student body had a standard deviation on the LSAT of 100—the range of scores for the 1948 norming population.[20] Where smaller standard deviations occurred, the validity coefficients were assumed to be below the correct coefficients and were adjusted upwardly.[21]

Yet even these comparisons with other law schools and adjustments to an original test taking population are not justified by theoretical considerations. To be defensible, restriction of range adjustments depend on the assumption that the individual law school had an actual applicant pool with as much variation in LSAT scores as the original 1948 norming population or even other law school applicant pools. Yet it is well known that applicants "self-select" into or out of the applicant pools for individual law schools based on their best estimates of their admission opportunities. It is a matter for empirical research, rather than unfounded assumption, to discover what the variation of LSAT scores within an individual applicant pool actually is. In addition, restriction of range adjustments assume that the other factors involved in the admissions decision were uncorrelated with LSAT scores. In particular, adjusting the validity coefficients upwards for LSAT scores assumes that law schools would not have admitted students on the basis of UGPA in the absence of LSAT scores, or that LSAT scores are not correlated with UGPA. In other words, restriction of range adjustments are justified only when they accurately reflect the actual predicament which admissions officials would face. Yet they are never grounded in actual situations, but instead are based on general assumptions which are rarely, if ever, encountered in actual practice. As indications of the "true" validity of the LSAT these adjustments are likely to be more misleading than enlightening.[22]

In addition, the results produced by the corrections do not seem to fit a coherent pattern at individual schools. For example, one law school had validity studies done for classes entering in 1957 and 1959, both of which had a standard deviation of 61 in LSAT scores. Yet the adjusted LSAT coefficient was .60 in 1957 and only .28 in 1959.[23]

Finally, results at identified law schools do not seem to fit neatly into the assumed pattern of low validity for highly selective law schools. For example, at Harvard Law School the Admissions Index "consistently produces correlation coefficients with. . .first-year law school grades between .5 and .6."[24] These correlation coefficients are higher than those reported as the average validity coefficients for large numbers of law schools. If restriction of range were the only confounding problem in interpreting validity study results, one would expect the observed coefficients at Harvard to be among the lowest. Instead, the reported coefficients at Harvard appear to be above the national average.

Some reports have acknowledged the inability of restriction of range explanations to completely account for drops in validity coefficients from one period to the next. In two studies the validity coefficients obtained in earlier years were compared to those obtained at the same schools in later years. The average validities were lower in the later studies. Yet even when both sets of results were adjusted for restriction of range, the later results continued to produce lower coefficients.[25] In the second of these studies the author of both reports noted the drop in coefficients after restriction of range corrections had been made. "Since the adjusted coefficients also show a drop, even though relatively small, increased selection does not seem to explain completely the trend toward lower validity coefficients."[26]

2. *Discrepant Predictors*

The second major problem in interpreting the apparent validity of predictors involves "discrepant predictors." Its potential significance has been noted on occasion, but has not been explored in previous research.

The impact of discrepant predictors on the apparent validity of a combined formula was explained in the above-cited report:

> For example, if an outstanding pre-law record were permitted to compensate for an unusually low LSAT score for a student, his record would contribute toward increasing the validity of pre-law record, if he did well in law school, and toward decreasing the validity of LSAT. If several such students were admitted and also some whose pre-law records were poor but whose test scores were high, it is possible that the results for the entire group of which these students were members would be a relatively low coefficient.[27]

This means that law schools with student bodies characterized by consistent results on the LSAT and UGPA—either high on both or low on both—would be more likely to display a relatively high validity coefficient for the formula combining the two predictors. For these schools, the LSAT was merely confirming what the applicant's UGPA has already shown. In contrast, schools whose student bodies are characterized by discrepancies between their two predictors—high LSAT and low UGPA or vice versa—

would be more likely to display a relatively low validity coefficient for the combined formula. According to this theory schools which tend to be applicants' first choice will have intense competition for places and will likely have a student body with high scores and grades and therefore a relatively high correlation coefficient for the combined formula.[28] This theory is consistent with the high reported validity coefficients at Harvard mentioned at footnote 24 above. Other explanations for Harvard's high coefficient are plausible as well, but the simple restriction of range explanation is unable to explain Harvard's results.

The present investigation compared the effects of range restriction and discrepant predictors on the correlation coefficients for formulas developed for 82 law schools for three separate years. The coefficients for the combined formulas were squared to measure the amount of variance in law school grades explained by the combined formula—designated as R^2 and expressed in percentages.[29]

The restriction of range effect was measured by comparing the range of LSAT scores in each law school class with the predictive validity of the combined formula. The range of LSAT scores was expressed in standard deviations[30] and correlated with the R^2 for each law school. When the formula developed for the 1973 entering class was applied to that class, the correlation coefficient between the range of LSAT scores in the class and the R^2 of the formula was .67.

The discrepant predictor effect was measured by comparing the degree of discrepancy between the LSAT scores and UGPAs of students at each law school with the predictive validity of the combined formula. The degree of discrepancy was expressed as a correlation between the LSAT and UGPA within each student body so that a negative coefficient indicates a student body characterized by discrepant predictors[31] and correlated with the R^2 for each law school. The theory asserts that schools with higher R^2 values will also have positive correlations between UGPA and LSAT within their student bodies; those with the lowest R^2 values will have large negative correlations between UGPA and LSAT within their student bodies. When the formula developed for the 1973 entering class was applied to that class, the correlation coefficient between the prevalence of discrepant predictors at each school and that school's R^2 value was .62.[32]

Interestingly, when the 1973 formula was applied to the classes entering the same 82 schools in 1974 and in 1975—the typical process of applying formulas developed on a preceding class to a subsequent class—the discrepant predictor effect outweighed the range restriction effect. The test for the restriction of range effect produced correlation coefficients of .51 in 1974 and .65 in 1975. In contrast, the test for the discrepant predictor effect produced correlation coefficients of .74 in 1974 and .71 in 1975. These results are consistent with expert opinion which has called discrepant predictors the "main problem" in graduate and professional school admissions.[33] The results for all three years are displayed in Table II.

TABLE II

RELATIVE IMPACT OF RANGE RESTRICTION AND DISCREPANT PREDICTORS ON VALIDITY OF LSAT PLUS UGPA FORMULA [a]

	1973	1974	1975
Restriction of Range [b]	.67	.51	.65
Discrepant Predictors [c]	.62	.74	.71

[a] Coefficients were squared to produce an R^2 which is a measure of the amount of variance in law school grades explained by the combined formula.

[b] Measured by the standard deviation of LSAT scores with each student body.

[c] Measured by the correlation between LSAT and UGPA within each student body.

Since the schools were unidentified, it is not possible to investigate the hypothesis that more selective law schools are those with positive correlations between LSAT scores and UGPA within their student bodies.

When an applicant with discrepant predictors is encountered during the admissions process, a careful scrutiny of the applicant's file is in order since the discrepancy between the two predictors creates a need to interpret the results. Various explanations for hypothetical applicants have been offered in the literature.

For applicants with high LSAT scores and low UGPA the following interpretations have been suggested:

> . . .if the applicant has a high score and a mediocre college record, it may be because he was bored at college.[34]
>
> Where there has been a significant period of time between an applicant's graduation from college and his application to law school, a poor college record coupled with a very high LSAT may indicate that the student is likely to do better in law school than the PFYA assigned by the computer. The reason is that the applicant may have been immature or disinterested in academic work when he attended college, resulting in a poor UGPA. However, it is possible and perhaps likely that he has matured since graduation and that the LSAT is a more direct test of his "abilities" and may be a better predictor than the two combined.[35]
>
> . . .the admissions officer may conclude that he has found a candidate with ability who will respond to the intellectual challenge of law training and realize his potential as indicated by the high LSAT scores. He assumes that low UGR is an indicator of low motivation to perform in the variety of courses required of undergraduates, and that a concentration of training in a field of interest will maintain motivation at a higher level. *On the other hand*, he may decide that since the candidate has not produced academically before, he will not now—high ability or no. (emphasis added.)[36]

For applicants with high UGPA and low LSAT scores the following interpretations have been suggested:

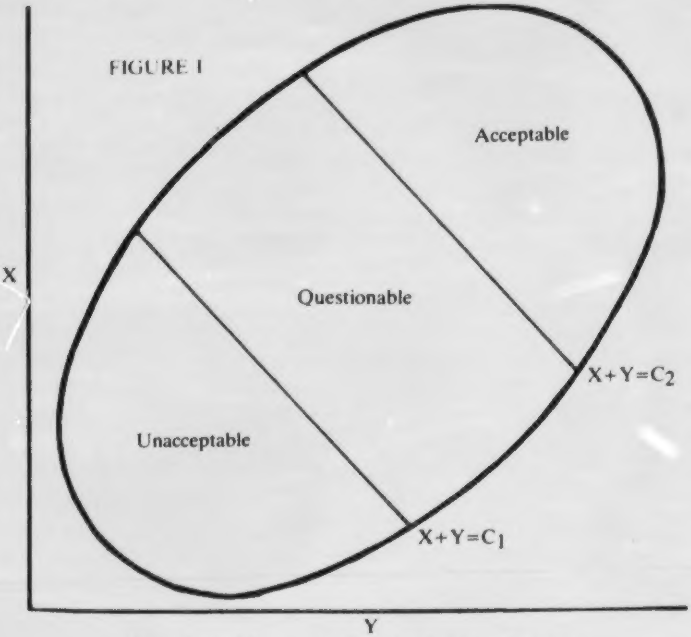
> In the case of the applicant with the low score and high college record, he may have had a bad day at the testing session and his college record may provide a sounder basis of appraisal.[37]

> If an applicant has a very high undergraduate grade point average and a low LSAT, inspection of his record may show that he went to a relatively weak college and that he majored in a subject with little academic content.
>
> If the student has a very high UGPA but a low LSAT and he can substantiate that he was ill when he took the test or that he has a history of doing poorly on standardized tests, the UGPA may be a better predictor than a combination of the two.[38]
>
> . . .if the admissions officer encounters a candidate with a relatively high UGR but a relatively low LSAT score, he may reason that this is a candidate who has demonstrated his ability to perform successfully in the academic environment despite low aptitude. *On the other hand*, he may feel that, though the candidate did well in undergraduate college, the more demanding law school environment and the high quality of competing students may prove too much for a student of rather limited potential. (emphasis added).[39]

The variety of explanations offered does not exhaust the list which a thoughtful reader could compile. Yet even the above-cited explanations are confusing enough to cause considerable discomfort for the admissions official encountering an applicant with discrepant predictors. Statistical analysis has been produced to show that applicants with discrepant predictors should be treated in the same manner as other applicants.[40] "However, informally expressed reactions and the occasionally expressed preference for unusual treatment, such as an interview, for candidates where the predictors disagree lead one to suspect that the evidence developed has not been convincing."[41] An additional statistical proof was then offered,[42] but the discomfort with discrepant predictors remains.

This discomfort, and the accompanying confounding of validity results, would be acceptable if it were a rare occurrence. Surprisingly enough, discrepant predictors within individual law school classes seem to be the rule rather than the exception. Negative correlations between the LSAT scores and UGPAs of student bodies have been reported in several studies which were primarily concerned with other issues.[43] During the present investigation a number of schools have provided validity studies produced in recent years. The majority of studies reporting the relationship betwen the LSAT and UGPA of admitted students have shown a negative correlation. Unfortunately, the validity studies produced during 1979 have employed a revised reporting format which no longer includes this correlation.

FIGURE I



Hypothetical Scatterplot Showing Decision Regions

(Source: Linn & Winograd, "New York University Admissions Interview Study," in 1(LSAC-69-2) at 547, 553 (1969).

There has been no serious effort to identify the extent of the occurrence of negative correlations between LSAT scores and UGPA within individual law schools. It has been possible, however, to review the intercorrelation of these two admission prerequisites in the first year classes of 82 law schools over a three year period between 1973 and 1975. In each individual year, 52 of the classes had negative correlations between LSAT scores and UGPA within individual law schools. It has been possible, however, to review the intercorrelation of these two admission prerequisites in the first year classes of 82 law schools over a three year period between 1973 and 1975. In each individual year, 52 of the classes had negative correlations between LSAT scores and UGPA.[44] Thus, these law school classes were characterized by a predominance of students with discrepant predictors in their application files.

Only one previous study has explored possible explanations for the existence of negative correlations between LSAT scores and UGPA within an accepted student body. New York University used to have an admissions process which accepted or rejected some applicants on the basis of their application files. A middle group of students was offered an interview. The intercorrelation between LSAT scores and UGPA was −.59.[45] As can be seen from Figure 1, which has been redrawn from the original report, a selection process which involves combining two predictors into a single formula can transform an applicant pool which has a positive correlation between the two predictors into an accepted student body with a negative correlation between the two predictors.

The effects of conducting an admissions process according to an Admissions Index is illustrated in Figure 1. If UGPA is plotted along one axis and LSAT along the other, then each applicant can be represented by a single point on the graph. In selecting a particular weighting of LSAT and UGPA in a combined formula, a line slope is determined with all applicants falling on each line with that slope receiving equal Indices. The general slope of the line will be from the upper left to the lower right, with the origin of both scales at the lower left. As the weight of LSAT is varied, the slope of the Index line changes. The slope of the line determines which applicants will be treated equally by the Index. The same applicants may be treated differently depending upon the particular slope of the line reflecting a particular Index. The admitted student body's numerical indicators will be determined by both the Index formula and the decision of admitted applicants to attend school elsewhere or at the school under study. Thus, the decision to select a particular formula combining UGPA and LSAT is only the beginning of a process which will result in a student body. While most attention is placed on selecting the weights assigned to elements of the formula, more attention needs to be devoted to the interaction of the formula with the applicant pool (see §V-C), and to the effects of the admitted student body's characteristics on subsequent validity studies (see §V-B).

The important point to be made about the admissions process is appropriately displayed in the New York University study. Those applicants which receive the greatest amount of attention during the admissions process are those falling in the middle range of applicants. These applicants typically have discrepant predictors—high on one indicator, low on the other. Admissions officials spend their time trying to arrive at an explanation for the discrepancy. It is possible that those interviewed at New York University Law School were asked to explain the discrepancies themselves. Whoever does the explaining, the fact remains that combining LSAT scores and UGPA into a single formula creates work for admissions officers. The amount of work saved during the admissions process apparently depends on the size of the applicant pool and the percentage of applicants who are automatically accepted or rejected on the basis of their combined formula. Schools which are uncomfortable in assigning a great role to the computer in selecting a student body will be those most burdened with the task of interpreting application files in which the two major admissions factors do not corroborate each other.

If the hypothesized admissions process at one law school were extended into an analysis of the entire law school admission process nationwide, a hypothesis for the incidence of negative correlations between UGPA and LSAT would emerge. According to such a theory, the law schools with the greatest drawing power would have the luxury of accepting students whose predictors were highly correlated. Schools with less appeal would be forced to admit students with one relatively low predictor. These schools would display a negative correlation between the two predictors within their student body. The plight of the least attractive law schools is less clear. If all applicants were able to gain admission to some school, which is not the case today, then a positive correlation may reappear as those applicants with the lowest qualifications on both predictors cluster at a few unpopular law schools.[46]

E. A Note on Confidentiality

The foregoing discussion has necessarily been couched in hypothetical terms because of the concern for the confidentiality of data provided by individual law schools. The confidentiality at issue does not involve the preservation of anonymity for individual law students, but the preservation of anonymity for individual law schools. This concern has not been evident throughout the history of the LSAT. The earliest studies included the names of law schools participating in the studies. Yet when these studies were recently republished in volumes the names were deleted. One such study contained the notation:

> The participating law schools were identified by name in the original report. For publication here they are identified as Schools A through F. School A, B, and C are located on the East coast. Schools D, E, and F are on the West coast.[47]

This concern for the anonymity of law schools participating in a study over 25 years ago seems inappropriate, particularly since the original research bulletin can be examined in libraries across the country.[48]

Today it has become commonplace for schools to be unidentified. Along with this tendency has been a tendency to avoid substantive analyses of study results which may involve the particular characteristics of individual law schools. This has two unfortunate results. First, as in the hypothesis offered above, substantive analysis may be facilitated by identifying individual schools. Anonymity impedes that analysis. Second, if schools which most observers considered similar did not yield similar results, or if differently regarded schools yielded similar results, questions about the results would be raised. Instead, when schools are unidentified, those interpreting the results may tend to associate discrepancies with statistical fluctuations and consistencies with prevailing preconceptions. Providing individual schools with individual validity studies does not solve this problem, since the context within which these studies are interpreted is the research base currently made available on the basis of results from unidentified schools. Moreover, the current trend in research conducted by ETS seems to be to avoid interpretations based on results from a single school and to prefer instead formulas based on combined results from a number of schools.[49]

This report has assured law schools that their anonymity will be preserved—in keeping with current practice. Yet it seeks to raise the question of confidentiality because of a conclusion that accurate interpretation of data is impeded by unnecessary concern for secrecy. Since this report is being produced in response to the *Bakke* case, which raised the spectre of protracted litigation over admission policies, it is to be expected that fear of litigation will promote concern for confidentiality. Yet an overriding concern for fairness and rationality in admissions may prompt a reappraisal of current confidentiality policies. Only actual experience with an open research program will verify the value of such an innovation. This report can merely raise the issue and admit an inability to completely explore some issues because of the current practice.

F. Implications of Imperfect Validity for Minority Admissions

The admittedly imperfect validity of Admission Indices creates a variety of serious issues affecting minority admissions to law school. Some suggest the need to interpret admission criteria differently for minority applicants; others suggest the need to revamp the criteria themselves. The remainder of this report will explore the background data relevant to various adjustments to traditional criteria and evaluation. This section will merely outline the significance of the issues.

The first major issue involves the use of Admission Indices to justify the rejection of minority candidates. Since there is research indicating that the numerical qualifications of law students admitted during the early 1960s did not predict which students would drop out of law school, there is considerable doubt whether students rejected under the much more stringent admissions competition of the current era would have dropped out of law school if admitted.

The second major issue involves the use of correlation coefficients derived from validity studies to justify reliance on Admission Indices during the admissions process. As noted above, these validity studies merely compare the relative Admission Indices with the relative first-year law grades of admitted students persisting until the end of the first year. The assumption that such validity results may be extrapolated to justify rejection of lower Indices is unproven. At the very least, the assumption that higher law grades indicate greater legal ability is questionable in light of the considerable evidence that academic grades do not predict future adult success.[50]

The third major issue involves the reliance on Admission Indices to reject minority candidates despite low correlation coefficients. This point is somewhat different than the previous two. Here the assumption of admission officials may be that lower indices do not necessarily indicate a likelihood of lower average grades in law school. Yet, as indicated above,[51] the importance of Admission Indices in the admissions process exceeds their apparent validity in the prediction of law grades.

The significance of this different importance may be compared to a hypothetical test of spelling ability. Spelling errors do affect law school grades and are correlated with LSAT scores.[52] However, the reader may feel considerable discomfort in choosing law students solely on the basis of their scores on a spelling test. Too much is missing from such a selection process. The point is similar when the complex process of developing a composite formula based on LSAT and UGPA is pursued to the point of accepting or rejecting students solely on the basis of the resulting index.

The formula produces an average validity coefficient which explains only 16 percent of the total variance in law school grades.[53] Even the higher coefficients reported at some schools explain approximatey 36 percent of the variance in law school grades.[54] This means that most variance in law school grades remains unexplained after comparing Indices.

Put another way, the "validity" of the Index derives mainly for correctly predicting that students will fall in the middle of their law school class. For example, one study examined two successive entering classes at 24 law schools. The predicted and actual grades of the 48 classes were compared using two different prediction methods. The actual grades of students were "grouped approximately into the high fifth, middle three-fifths, and low fifth."[55] The results showed "a remarkable similarity between the two methods."[56] The authors reviewed the results of one method and concluded:

> It seems reasonable to conclude that a method which assigns only 180 students to low groups when there are actually 1728 members of these groups and which assigns only 292 students to high groups when there are 1771 members of these groups is unduly conservative.[57]

Thus, most of the "validity" of the prediction methods examined in that study resulted from correctly predicting that most students would earn grades in the middle three-fifths of the class. Indeed, of the 180 students predicted to fall in the bottom fifth of the class, two actually fell within the top fifth. Of the 292 students assigned to the top fifth, 10 actually fell within the bottom fifth.[58] Rejecting students on the assumption that they would fall within the bottom of the class on the basis of validity coefficients which are based on correctly predicting students to fall within the middle of the class seems erroneous.

These three issues of imperfect validity will be reexamined in the last chapter of this report to identify methods of assuring continued minority admission to law school despite low scores on predictors which themselves have low validity. The next chapters will explore a further issue—the comparative validity and bias of UGPA and LSAT. This chapter has examined the significance of a combination of these predictors in the admissions process. Minority admission opportunities may be affected by the weight given each of these criteria. Thus, if one predictor shows less discriminatory impact against minority students, the further inquiry into the comparative validity of the two criteria should be explored. If one criteria appears to be less discriminatory and more valid then the issue of weighting the two criteria becomes important. Current weighting of the two criteria may disadvantage minority students even more than a strict adherence to an Admissions Index derived from a different weighting of the criteria.

NOTES

1. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 15 (1979).

2. Miller, "Personality Differences and Student Surivival in Law School," in 1 (LSAC-65-1) at 299, 300 (1965).

3. *Id.* at 307.

4. Miller, "A Follow-up Study of Personality Factors As Predictors of Law Student Performance," in 1(LSAC-67-2) at 403, 409 (1967).

5. Johnson & Olsen, "Comparative Three-Year and One-Year Validities of the Law School Admission Test at two Law Schools," in 1 (LSAC-52-2) at 27, 29 (1952).

6. Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1 (LSAC-65-2) at 311, 319 (1965).

7. Schrader, "Relationships Between Characteristics of Minority Group Students who Entered Law School in 1968, 1969, and 1970," in 2 (LSAC-74-6) at 609, 612 (1974).

8. *Id.*

9. Thurman, "The Art of Picking Law Students," 32 The Bar Examiner 51, 57 (1963). At the time, Thurman was the Dean of the University of Utah College of Law and the President of the Association of American Law Schools.

10. Miller, "A Follow-up Study of Personality Factors As Predictors of Law Student Performance," in 1(LSAC-67-2) at 403, 418 (1967).

11. Schrader & Olsen, "The Law School Admission Test as a Predictor of Law School Grades," in 1(LSAC-50-1) at 9, 10 (1950).

12. Olsen, "The Effectiveness of Tests of Writing Ability and of Directed Memory for Predicting Law School Grades and Ratings of Writing Ability," in 1(LSAC-56-1) at 55, 67 (1956).

13. Pitcher, "The Prediction of First-Year Law School Grades From Experimental Tests of Writing and Reasoning Ability and from the Law School Admission Test, 1959-1960," in 1(LSAC-62-2) at 201, 222 (1962).

14. Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1(LSAC-65-2) at 311, 316 (1965).

15. Carlson & Werts, "Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results," in 3(LSAC-76-1) at 211, 224 (1976).

16. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 306 (1972).

17. See e.g., Willingham, Breland et al., "The Status of Selective Admissions," in Carnegie Council on Policy Studies in Higher Education, ***Selective Admissions in Higher Education*** at 65, 240 (1977) (Appendix G-10).

18. McPeek, Pitcher, & Carlson, "The Predictive Effectiveness of Several Experimental Item Types and the Operational Item Types in the Law School Admission Test in 1970-71," in 2(LSAC-74-1) at 495, 509 (1974). The standard deviation on UGPA at individual law schools has been reported for 82 law schools during three separate years. See Rubin, "Using Empirical Bayes Techniques in the Law School Validity Studies," (LSAC-78-1) at 73, 76, 79 (1977) (table 1).

19. B. Pitcher, W. Schrader, & J. Winterbottom, *Law School Validity Study Service* 22 (1973); Schrader & Pitcher, "Predicting Law School Grades for Black American Law Students," in 2(LSAC-73-6) at 451, 577 (1973).

20. Pitcher, "The Prediction of First-Year Law School Grades from Experimental Tests of Writing and Reasoning Ability and from the Law School Admission Test, 1959-1960," in 1(LSAC-62-2) at 201, 220 (1962). The raw scores earned by the original group of candidates taking the LSAT in 1948 were converted to a scale with a mean of 500 and a standard deviation of 100. Law School Admission Services, *Operations Reference Manual* §2, 3 (1979).

21. Compare, Whitla, "Evaluation of Decision Making: A Study of College Admissions," in *Handbook of Measurement and Assessment in Behavioral Science* 456, 469 (D. Whitla, ed. 1968).

22. Wesman, "Law School Admission Test," in the *Fourth Mental Measurement Yearbook* 812, 815 (O. Buros, ed. 1953); Linn, "Range Restriction Problems in the Use of Self-Selected Groups for Test Validation," 69 Psychological Bulletin 69, 72 (1968); McPeek, Pitcher & Carlson, "The Predictive Effectiveness of Several Experimental Item Types and the Operational Item Types in the Law School Admission Test in 1970-71," in 2(LSAC-74-1) at 495, 508-09 (1974).

23. Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1(LSAC-65-2) at 311, 326 (1965) (table 2).

24. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 21 (1979).

25. Pitcher, "The Prediction of First-Year Law School Grades from Experimental Tests of Writing and Reasoning Ability and from the Law School Admission Test, 1959-1960," in 1(LSAC-62-2) at 201, 222 (1962); Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1(LSAC-65-2) at 311, 325 (1965).

26. Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1(LSAC-65-2) at 311, 325-27 (1965).

27. *Id.* at 327.

28. Dawes, "Graduate Admission Variables and Future Success," 187 Science 721, 723 (1975).

29. See generally, L. Cronbach & G. Gleser, *Psychological Tests and Personnel Decisions* 28 (1957); Educational Testing Service, *Law School Validity Service* 9 (1976).

30. Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1(LSAC-65-2) at 311, 327 (1965).

31. Dawes, "Graduate Admission Variables and Future Success," 187 Science 721, 722 (1975).

32. Data used in this analysis appeared in Rubin, "Using Empirical Bayes Techniques in the Law School Validity Studies," in (LSAC-78-1) at 16, 28, 73, 76, 79 (1977) (tables 2, 4, Appendix table 1).

33. Dawes, "Graduate Admission Variables and Future Success," 187 Science, 721 (1975).

34. B. Pitcher, W. Schrader, & J. Winterbottom, *Law School Validity Study Service* 23 (1973).

35. Hearings Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 399 (1974) (testimony of F. Hart).

36. Boldt, "Predicting Law School Achievement with Discrepant Predictor Scores," in 1(LSAC-66-1) at 365, 366 (1965).

37. B. Pitcher, W. Schrader, & J. Winterbottom, *Law School Validity Study Service* 23 (1973).

38. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 399 (1974) (testimony of F. Hart).

39. Boldt, "Predicting Law School Achievement with Discrepant Predictor Scores," in 1(LSAC-66-1) at 365, 366-67 (1965).

40. *Id.* at 366-69; Boldt, "Extension of the Discrepant Predictor Study," in 1(LSAC-68-1) at 493, 494 (1968).

41. Boldt, "Discrepant Predictor Study Using Validity Study Results," in 2(LSAC-70-2)at 5, 6 (1970).

42. *Id.* at 10.

43. Pitcher, "The Law School Admission Test as a Predictor of First-Year Law School Grades 1962-1963," in 1(LSAC-65-2) at 311, 355-60 (1965); Miller, "A Follow-up Study of Personality Factors as Predictors of Law Student Performance," in 1(LSAC-67-2) at 404, 424-28 (1967) (tables 2-6); Klein & Hart, "Chance and Systematic Factors Affecting Essay Grades," in 1(LSAC-68-3) at 511, 525 (1968); Schrader & Pitcher, "The Advanced Tests of the Graduate Record Examinations as a Predictor of Law School Grades," in 2(LSAC-70-5) at 47, 58-59 (1970) (table 3); Reilly, "Contributions of Selected Transcript Information to Prediction of Law School Performance," in 2(LSAC-71-4) at 133, 138 (1971).

44. Rubin, "Using Empirical Bayes Techniques in the Law School Validity Studies," in (LSAC-78-1) at 73, 76, 79 (1977) (Appendix table 1).

45. Linn & Winograd, "New York University Admissions Interview Study," in 1(LSAC-69-2) at 547, 552 (1969).

46. Dawes, "Graduate Admission Variables and Future Success," 187 Science 721, 723 (1975).

47. French, "Validation of the Practical Judgment and Directed Memory Experimental Sections of One Form of the Law School Admission Test," 1(LSAC-52-1) at 21, 22 (1952).

48. French, "Validation of the Practical Judgment and Directed Memory Experimental Sections of One Form of the Law School Admission Test," *Research Bulletin* 52-3 (April 11, 1952).

49. Rubin, "Using Empirical Bayes Techniques in the Law School Validity Studies," in (LSAC-78-1).

50. D. Hoyt, *The Relationship Between College Grades and Adult Achievement, A Review of the Literature* (1965).

51. See note 23 *supra.*

52. Linn, Klein & Hart, "The Nature and Correlates of Law School Essay Grades," 32 Educational and Psychological Measurement 267, 274 (1972).

53. See generally, L. Cronbach & G. Gleser, *Psychological Tests and Personnel Decisions* 28 (1957).

54. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 21 (1979).

55. Schrader & Pitcher, "Discrepant Function Analysis in the Prediction of Law School Performance," in 2(LSAC-72-4) at 199, 200 (1972).

56. *Id.* at 218. The two methods compared were discrepant function analysis and the multiple regression approach.

57. *Id.* at 215.

58. *Id.*

III. College Grades

A. The Value of College Grades in Selecting Law Students

The most venerable prerequisite for admission to law school is a commendable performance during undergraduate collegiate studies. Although a college degree has not always been a prerequisite to legal studies,[1] and although no prescribed course of study is required of law candidates during college,[2] a strong college record is highly valued today by all law school admission officials.

This preference for candidates who have excelled in college is understandable. Put simply, future academic performance is best indicated by past academic performance. As one ETS researcher has noted:

> Faculties, measurement specialists, and selection committees usually agree that the previous academic record of the student is the most relevant source of information for judging academic competence.[3]

Although the subject matter studied during college and law school may differ, the process of studying is quite similar. One study of law students found that those students who earned higher grades than expected had usually developed systematic study habits during their college years.[4] Moreover, the list of factors admittedly not reflected in the LSAT, including "persistence, originality, effective study habits, self-discipline, and motivation,"[5] are all reflected in college grades. As the former President of the Law School Admission Council has testified: "if a school had to choose to use only one predictor it would use the undergraduate grade point average."[6]

The debate in law school admissions is not whether to consider an applicant's UGPA, but how to consider UGPAs earned by different students in different courses and majors at different colleges, and, more recently, how to combine an applicant's UGPA with their LSAT scores into a predictive formula.

B. Apparent Infirmities in College Grades as Criteria for Admission

1. *Variety of Courses*

Since no course of study is prescribed for admission to law school, and since the legal profession includes such a variety of specialties, students applying to law school present a wide variety of courses on their college transcripts. Admission officials feel uncomfortable comparing the UGPAs of students whose course lists differ significantly. This has been offered as a major reason for relying on LSAT scores, which put all candidates on a common footing.

In part, this discomfort arises from the assumption that students would earn significantly different grades if they had taken different courses. Yet research does not substantiate this assumption. A review of research has noted that:

> . . .to a surprising degree individual students tend to make generally similar grades in different types of courses. This may be because faculty are influenced by an academic "halo" when assigning grades . . .or possibly because students tend to compensate by working hard in (or avoiding) courses in areas that are difficult for them. In any event the practical effect of this homogeneity has been to make it difficult to produce any additional types of information from grade transcripts (for example, special types of averages such as one based upon courses in the major) that consistently add anything to the predictive usefulness of the overall grade record.[7]

Thus, the variety of courses does not necessitate a detailed analysis of each course in order to make the overall UGPA a meaningful basis for comparison. In fact overall GPA has been found to be a better predictor of first-year law school average than even scores on the Graduate Record Examination advanced tests in special subjects.[8]

The predictive validity of college grades is made possible by the high reliability of overall UGPA. A student completing four years in a college following the semester system with four courses each semester will compile an overall UGPA based on the collective judgment of 32 professors.[9] The reliability of the cumulative average earned during the past three years of college has been estimated at .92[10] which is exactly the same reliability estimate offered for the entire LSAT.[11] This statistic is supposed to indicate that a student taking another four-year college course would earn approximately the same grades the second time as the first.

2. *Grade Inflation*

A widely reported infirmity with UGPA is commonly referred to as "grade inflation." This term is typically used to indicate that the grades earned by today's college student would have been lower if that student had attended college several years ago. Evidence for this claim involves comparisons of the average grade earned at the same college during different years. Recently reported examples include: Dartmouth College, where 27 percent of the class graduated with honors in 1968, but 60 percent graduate with honors in 1975; the University of Illinois, where the freshman average rose from 2.67 in 1968 to 2.86 in 1977; and the University of North Carolina, where the number of A's doubled between 1962 and 1972.[12] The implication of claims of grade inflation are less clear.

If the only issue involves the comparison of grades of students who graduated in different years, then some deflation of recent grades or inflation of older grades may be in order. The issue would be determining the amount of justifiable adjustment. The assertion that older and younger students should be compared on the basis of LSAT scores is less clear. Students who take the LSAT after a period away from academia seem to do worse on the test.

> ETS notes that candidates over the age of 27 do somewhat more poorly than others on the LSAT and that mean scores fall dramatically as candidates grow older than 27. Candidates over 31 have a mean score 60 points below the mean for all persons taking the LSAT.[13]

Thus, rather than aid older students whose grades may not have been inflated, comparing all students on the basis of LSAT scores may actually compound the disadvantage which older candidates face in competing with younger applicants.

According to some, the problem with grade inflation is that is has occurred unevenly. As one news story observed: "many faculty members seem to think that grade inflation affects every school but their own."[14] Apparently these faculty members feel that their own students are being unfairly handicapped in their competition with students from other colleges where grade inflation has been rampant.

Comparing students on the basis of LSAT scores is offered as a solution to this problem, since the test is a common yardstick. Yet this does not completely solve the problem, since grades are typically entered into a formula with LSAT scores, so that students with higher grades will continue to have an advantage even if their LSAT scores are equal to those of other students with lower grades.

There remains the possibility that colleges with higher average grades are also those with higher average LSAT scores. This inference is supported by a study comparing the average grades and the average LSAT scores earned at 125 colleges. A correlation of .48 between the two averages was obtained. The authors of the study reasoned:

> One possible interpretation of this result is that faculty members in highly selective colleges are giving a greater proportion of higher grades to students generally than occurs in less selective colleges.[15]

This interpretation, if true, significantly affects the entire rationale for the LSAT and undermines attacks made on the UGPA standard.

If colleges awarding high grades are also those with students earning high LSAT scores, then the addition of LSAT scores to UGPA does not compensate for different grading standards. Instead it accentuates the differences between standards. The further claim, discussed below, that combined formulas of UGPA and LSAT need to be further adjusted to account for college quality is not supported. Instead, boosting the averages of students from "high quality" colleges would further accentuate the differences among colleges and further disadvantage students who attended a college which awarded low grades and whose students earned low average LSAT scores.

3. *Lack of Differentiation among Grades*

A related complaint about college grades is sometimes termed "grade inflation" but is not precisely that. Admission officials complain that those applying to law school all present very high, and therefore very similar, college averages.

It is the discomfort associated with selecting some candidates are rejecting others on the basis of small differences in UGPA which has been characterized as an aspect of grade inflation.[16] This phenomenon, while related to grade inflation, is more properly understood as a function of the increased competition for law school places.

The familiar surplus of well-qualified applicants to law school has not been a perennial luxury. One study noted that:

> In 1961, the Law School Admission Council, concerned that the legal profession was not getting its far share of talent, authorized a study to uncover the reasons for the profession's lack of drawing power.[17]

Yet, since 1973, every ABA-accredited law school has rejected candidates whom it considered fully qualified to complete law school.

The competition among applicants to these law schools is keen. Many candidates offer UGPA's which are very high. For example, 40 percent of all white and unidentified law school applicants in 1976 had UGPA's above 3.25.[18] With such a large number of applicants with high grades, the differences between grades of top applicants cannot be very great. The increased study of applicants, combined with the apparent rise in college grades, has resulted in an increase in the average college grades of accepted law students. For example, 23 law schools were compared during three time periods. During 1964-66, the average UGPA was 2.76 at all 23 schools, during 1971-72 the average UGPA was 3.04, during 1975 the average UGPA was 3.35.[19]

The significance of increased competition for law school places in comparison to grade inflation as the cause of these increased UGPAs can be understood by noting that the average UGPAs among college students in 1965 was 2.44, in 1972 was 2.72 and in 1975 was 2.74.[20] Interestingly, the UGPAs of law students at these 23 law schools was only .32 above the average college grades earned in 1965, but .61 above the average college grades of 1975 despite the higher averages in 1975 and the attendant likelihood of a "ceiling effect" producing a smaller difference between average college grades and those of accepted law students. Since a larger gap appeared in 1975 compared to 1965, the increased UGPAs among law students seems to be more a function of increased competition rather than of general grade inflation trends.

The articulated response to this discomfort with making large decisions on the basis of small UGPA differences has been to place increased emphasis on LSAT scores. Yet the rise in UGPA's among law applicants and students has also been accompanied by an increase in the LSAT scores of applicants and students. For example, 37 percent of all white and unidentified applicants to law school in·1976 had LSAT scores above 600.[21] In comparison, only eight of the 134 law schools accredited by the ABA in 1961 had entering classes whose median LSAT score was 600 or above.[22] The UGPA and LSAT scores of law students have risen in tandem. At one school, the entering class for 1969 had a median UGPA of 2.3 and a median LSAT of 503, by 1972 these figures had increased to 3.0 and 600.[23] Thus, the competiton for law school places has made choices based on small differences in LSAT scores a harsh reality which also causes discomfort among admission officials.

There is a frank recognition of the gap between theory and practice in evaluating LSAT scores. The former Director of Admissions at Harvard Law School recognizes that "small differences in LSAT scores (less than 30 or 40 points) provide perhaps more misinformation than assistance in an admissions process."[24] Yet as admissions become extremely competitive, those forced to choose among candidates often ignore caveats about the use of test scores. As the former Harvard admissions director concedes:

> . . .it is very easy to allow a difference of ten points or so on the LSAT to dictate many of those close decisions. An admissions comittee must be continually alert to these dangers and consistently skeptical of the apparent precision of test measurements to avoid this tendency. Yet no committee can avoid it entirely.[25]

As a solution to the problem of choosng among candidates on the basis of small differences in UGPA, selection based on small differences in LSAT scores merely exchanges one evil for another. Choosing candidates on the basis of combined UGPA and LSAT formulas alleviates this difficulty only if LSAT somehow refines UGPA distinctions in some rational and consistent fashion. The evidence reviewed in this chapter indicates that LSAT does not improve our understanding of the meaning of UGPA. The evidence discussed in Chapter V indicates that there is no easily defensible rationale for combining LSAT and UGPA into a formula to predict law school grades.

4. *Quality of Undergraduate Institution*

Perhaps the most widely articulated reason for distrusting UGPA is the fact that colleges differ in the quality of their student bodies and the strictness of their academic standards.[26] Yet the fact that colleges differ has not led to a reliable system for adjusting the grades obtained at different colleges which will improve the predictive validity of formulas based on unadjusted grades and LSAT scores. Two systems recently used by law schools to adjust for college quality deserve discussion because they point out the need to balance the validity and bias resulting from such adjustments.

Grade adjustment systems should be distinguished from programs which assign particular colleges to particular members of the admissions committee who can specialize in individual schools to better understand the transcripts presented by applicants.[27] Grade adjustment systems typically attempt to compare colleges about which little is known among admission committee members. Unfortunately, the effort to bridge a gap in knowledge often involves prejudicial stereotypes being applied to schools unfamiliar to officials. Research has shown that formal adjustment systems are unlikely to improve predictive validity, but more than research is necessary to dislodge uninformed prejudices against certain colleges.

The first type of grade adjustment system involves the Mean LSAT from the College of each applicant (LCM). The LCM is the average LSAT score earned by 25 or more students graduating from single undergraduate institution and applying to law school within a three year period. According to its supporters, the LCM can be used to adjust for the quality of undergraduate institution and indirectly fo the grades awarded by that institution.

> It does seem reasonable. . .to expect that student who has earned a 3.00 grade point average at an undergraduate college whose LCM is 600 might have earned a higher UGPA if he or she had attended an undergraduate college where the LCM was 450.[28]

To a surprising number of law schools during the 1970s, this logic was compelling. Twelve law schools used the LCM as an addition to their formula of UGPA and LSAT during 1971-72;[29] the next year 58 law schools incorporated the LCM into their formula.[30]

Despite the apparent logic associated with using LCM as an additional predictor, the combination of its exclusionary effects and its lack of actual predictive validity has led to its demise. It is exclusionary

> . . .because studies have shown that use of LCM. . .may skew the admissions policy by making it practically impossible for someone to gain admission when he or she comes from a college with a low median law school admission test score even though that person as an individual has very high credentials.[31]

Predictive validity studies have also shown that the LCM lacks the ability to improve validity over that obtained from the UGPA and LSAT in combination. One study observed that "whatever component of school quality is measured by LCM, it is not of value as a predictor of law school grades."[32] After several previous attempts to successfully adjust college grades and improve validity and also failed,[33] the author of the latest unsuccessful attempt was forced to conclude: "Though it is eminently plausible that grade adjustments be made, we do not know how to make them effective."[34] The Law School Data Assembly Service (LSDAS) continues to provide law schools with the LCM of candidates, but no longer includes the LCM in prediction formulas.

The second type of grade adjustment involves comparing the performance of law students from different undergraduate institutions during their first year at the same law school. This method has the theoretical advantage of directly correcting college grades on the basis of law school performance rather than indirectly adjusting grades on the basis of a collge's average LSAT score among its graduates. Yet it has the significant disadvantage of limiting its application to those law schools which have large groups of students from particular colleges.

One large law school actually adjusts the grades of applicants from 11 undergraduate institutions to make those grades comparable to grades earned by graduates of its own undergraduate college.[35] Yet even this large law school is forced to group students from other colleges according to their average LSAT scores. For students from these colleges, the system is more remote than even the LCM system, since the grades from an entire group of colleges with similar LSAT averages are grouped for adjustment.

Individual performance is further submerged. Yet this grouping is essential if any stability of result from year to year is to be expected from the adjustment process.[36]

Colleges providing sufficient numbers of students to a single law school to allow their grades to be independently evaluated and adjusted may suffer from statistical instability in the results. For example, Yale Law School had a practice of grouping colleges into three categories to reflect quality. The categories were based on the actual performance of graduates from these colleges at Yale Law School. Surprisingly, the results obtained in 1948 put Harvard College into the lowest of the three groups. Yale admission officials were surprised, but faithful to their theory. They placed Harvard into the lowest category until statistical results would suggest otherwise.[37] Moreover, even after the 11 undergraduate institutions were adjusted by one law school discussed above, the predictive validity of the formulas for these individual colleges does not substantially improve on the validity of a formulas developed for colleges grouped according to their LSAT means.[38]

For colleges grouped according to their LSAT means, the problems of achieving admission opportunities for their graduates are compounded. The initial attraction of grade adjustment stems from a discomfort in evaluating students from little known colleges. It is their lack of a reputation which places these colleges into a group with other little-known colleges. Yet, individual colleges are unable to establish their own reputations under such a system. Nonetheless, top students rejected under this system will force officials from such a college to conclude that there is no way to gain admission to a top law school from that college.[39] Stricter grading practices at the college will not improve their graduates' admission opportunities, since it is the average LSAT of its graduates which is causing the barrier. Only a revolutionary shift in the admission policies of the college designed to raise the likely LSAT average of its graduates and eventually their law school admission prospects will enhance the credibility of the college's grading policy.

One recently reported exception to the general trend of failure in grade adjustment studies deserves comment. One large eastern law school used both types of adjustments discussed above and found validity increases of ten correlation points or more for each type adjustment.[40] This result does not provide a basis for distinguishing between the two types of adjustments, but does suggest optimism to those seeking support for adjustment practices. It is possible, however, that the unique situation of this study will preclude its generalizabilitv to other law schools.

The possible limitation of this study involves the absolute validity of formulas derived without grade adjustments. For both white students and other racial categories of students, the reported validity coefficients were .14.[41] From this baseline validity coefficient, increases in validity based on a variety of potential factors might be expected. This was demonstrated in 1958 when certain personality factors were investigated as possible indicators of law school performance. The study found that for law schools at which the LSAT was a poor predictor, personality factors appeared to contribute substantial validity. Yet at law schools at which the LSAT produced higher validity coefficients, the apparent validity of personality factors disappeared.[42] It may be hypothesized, therefore, that grade adjustments will appear valid at schools experiencing low validity coefficients from a formula combining LSAT and UGPA, but will lack apparent validity at schools exhibiting higher coefficients for a formula. Thus, the reported study may be more a reflection of the poor validity of the unadjusted formula at this particular law school than it is a bellweather for successful adjustments at other law schools exhibiting higher validity coefficients. Even for those schools with low coefficients, the question of what additional factors to include during the admissions cycle is not answered by this study.[43]

Despite the significant barrier which grade adjustments pose for graduate of little-known colleges or colleges with low LCMs, and despite the general lack of predictive validity of grade adjustment studies, the practice of grade adjustments can be expected to continue. "For one thing, the belief that differences in undergraduate institutions must be reflected in the meaning of their grades dies hard."[44]

Before the introduction of the LCM into prediction formulas by LSDAS law schools employed informal methods for adjusting college grades.[45] In the wake of the LCM, schools which used this element in their admissions formulas may return to informal adjustment systems.

A beginning for a reassessment of the college grading process may be the fact that colleges with high LCMs also tend to be those with relatively high UGPA averages among its graduates.[46] If this initial finding among 125 colleges is borne out nationwide in a study being conducted as part of the current investigation, several implications for the evaluation of UGPA and LCM will result.

The first implication involves the process by which grades are awarded at the undergraduate level. For those colleges with high LCMs, the faculty may reason that the student body is likely to pursue professional studies and that the performance of students during college reflects their ability to successfully complete professional studies. The faculty at such a college is likely to award a large number of high grades to reflect this generally high quality of performance. Thus, when students eventually score well on the LSAT, the grades awarded by the faculty will have been borne out on the standardized test.[47]

Conversely, the faculty at a school with a low LCM may assume that the majority of the student body will not pursue graduate or professional studies. Moreover, since the college is likely to have a mediocre reputation, if it has any reputation at all, the faculty will be cognizant that any student who does pursue an advanced degree will be evaluated by the professional school faculty as a representative of the entire college. If that student ultimately fails to complete a law degree because of academic deficiencies, the failure will reflect as much on the college as on the individual. Thus, the college faculty is likely to adopt a harsh grading standard both to avoid a reputation as a "degree mill" and to identify the truly outstanding graduate as a promising candidate for legal or other graduate studies. The generally low LSAT scores of the student body will be reflected in a relatively low average UGPA of that student body as well. The unusual graduate who has compiled a high

UGPA at this institution surviving this harsh grading standard ought to be evaluated as the exceptional student which the faculty has identified as capable of succeeding at advanced studies.[48]

Seen in this light, both the positive correlation between LCM and UGPA of colleges and the perennial inability of grade adjustment systems to improve validity become understandable. In a sense, the faculties of colleges across the nation have internalized a standard of excellence which is reflected in individual college grading practices. High status schools award relatively high grades, low status schools preserve their academic reputation by refusing to inflate grades.

C. College Grades of Minority Candidates

The general conclusions about the validity of college grades as predictors of law school performance must now be examined for their relevance to minority candidates for legal studies. As will be seen, the UGPA is a less discriminatory prerequisite than is the LSAT. Grade adjustment systems are in danger of perpetuating the effects of illegal discrimination at lower levels of education, including college admission policies.

1. *The Comparison of White and Minority College Grades*

Those minority students who graduate from high school, enter a four-year college, and graduate with a baccalaureate degree are members of a smaller and smaller minority among the general minority youth population. They are the survivors of familiar economic and social disadvantage and of continuing discrimination in education as well. For example, among the black students finishing public schooling in 1972, 75 percent attended public school in school districts adjudicated to be in violation of *Brown v. Board of Education*.[49] Those who attend college often suffer under financial and family pressures which impede their academic achievement. Those who attend predominantly white undergraduate institutions may experience racial attitudes reflecting prejudicial stereotypes which also impair intellectual discussions and collegial interchange among fellow students or with faculty members.

Succeeding in academia against these obstacles is a monumental accomplishment. Achieving a very high UGPA is an even more noteworthy achievement. Thus, as a matter of first impression, it is likely that minority students will have a more difficult time achieving high UGPAs than their white counterparts. Statistics bear out this impression, since 40 percent of white and unidentified applicants to law school have UGPAs above 3.25, compared to only 13 percent of the black applicants.[50] The relevant inquiry involves the fate of these survivors of a national pattern of disadvantage and discrimination. If the LSAT further decreases the supply of competitive minority applicants, then this may be described as a measure of the discriminatory impact of the test.

As Table III shows, getting high grades or high test scores is a comparable feat for whites. For example, 40 percent of white applicants have college grades of 3.25 or higher, and 37 percent have LSAT scores above 600. In contrast, high test scores are much rarer for top black college students. While 13 percent have 3.25 or better averages, only 3 percent score above 600 on the LSAT. when both high test scores and grades are required, half the top whites are eliminated, while the top blacks are literally decimated.

These results from the national application pool have been previously paralleled by similar patterns at individual law schools. A sample of students at several law schools in the class of 1972 found that 24 percent of the minority students had 600 or above on the LSAT and 29 percent ranked in the top ten percent of their college graduating class. In contrast 63 percent of the white students had LSAT scores of 600 or above, compared to only 41 percent who had ranked in the top ten percent of their college graduating class.[52]

At Emory Law School some minority students were admitted to a Pre-Start program during the summer preceding law school. The mean UGPA of these students was 2.6 compared to a mean UGPA of 2.8 for regularly admitted Emory law students. In contrast, the mean LSAT of the Pre-Start students was 355 compared to a mean of 567 for the regularly admitted students. The authors of the study evaluating the Pre-Start program concluded that "While the difference in the grade point averages is not significant, the contrast in LSAT scores is clearly dramatic."[53]

TABLE III[91]
NUMBER & PERCENT OF APPLICANTS AT OR ABOVE SELECTED LEVELS OF LSAT SCORES AND COLLEGE GRADE AVERAGES

Level	BLACK Number in National Pool	Percent of Blacks	WHITE Number in National Pool	Percent of Whites
LSAT at or above 600	142	3	24,458	37
LSAT at or above 500	811	19	51,307	77
LSAT at or above 450	1,437	33	59,359	89
College grades at or above 3.25	556	13	26,753	40
College grades at or above 2.75	1,929	45	50,315	75
College grades at or above 2.50	2,805	65	58,420	87
Combined: LSAT at or above 600 and college grades at or above 3.25	39	1	13,151	20
Combined: LSAT at or above 500 and college grades at or above 2.75	461	11	40,906	61
Combined: LSAT at or above 450 and college grades at or above 2.50	1,040	24	52,868	79

TABLE IV[96]

LAW SCHOOL ACCEPTANCE RATES FOR 1976 APPLICANTS
(in Percent)

GPA Range	Black	Chicano	Unspecified Minority	White
3.74+	86	90	83	91
3.50-3.74	77	85	75	83
3.25-3.49	69	69	67	72
3.00-3.24	61	61	59	60
2.75-2.99	45	50	46	48
2.50-2.74	34	33	35	37
2.25-2.49	25	26	30	28
2.00-2.24	14	12	12	21

The clear pattern of results based both on national applicant pools and on students admitted to the same law school under different programs indicates that the discriminatory impact of the LSAT is considerably greater than that of UGPA. An indication of the practical effect of this different discriminatory impact can be derived from hypothetical results based on the applicants to law school in 1976. According to this study, if law schools were to compre candidates with the same combination of LSAT and UGPA without knowledge of the candidates' racial identification, the acceptance rates would presumably match those of white candidates under current admission policies. Were this the case, the number of black applicants receiving an offer of admission from any ABA-accredited law school would drop by 60 percent and the number of Chicanos offered admission would drop by 40 percent.[54]

In contrast to this serious decrease in the admission opportunities of minority students applying under a race-blind system using LSAT *and* UGPA as they are applied to white candidates, the opportunity for admission of minority students on the basis of UGPA *alone* is considerably more favorable. The significance of this difference can be estimated by comparing the admission rates for applicants from various racial groups with the same UGPA. The same study of applicants during 1976 concluded, "The acceptance rate for blacks at or above a UGPA of 2.75 is 58 percent. The rate for Chicanos at this level is 64 percent and for the white and unidentified group is 68 percent. A similar pattern is evident for UGPA at or above 3.25."[55] This pattern of advantage for white applicants is borne out throughout the entire range of UGPA, as Table IV illustrates. (see pg. 115).

The reader will notice that the relative advantage of white students increases at the lowest ranges of UGPA, indicating that the racial difference in LSAT scores benefits those whites with poor UGPAs most.

The comparison of results based on hypothetical national admissions models indicates that the difference in UGPA and LSAT averages among minority candidates has a significant impact on the admission opportunities of minority applicants. While a considerable percentage of minority applicants would seem uncompetitive when both LSAT and UGPA are combined, the simple comparison of acceptance rates among applicants with similar UGPAs indicates that more minority applicants could have been accepted without producing "reverse discrimination" against white applicants. Of course, no hypothetical admissions models can actually identify what the consequences would have been if LSAT scores were ignored. This is particularly true for a hypothetical national admissions process. The simple fact is that some law schools have been much more successful in integrating their student bodies than have others. "Over 53 percent of the minority student population is located in 31 law schools that collectively account for only 24 percent of the overall law school population."[57] It is possible, however, to counter the impression given during the *Bakke* litigation that "reverse discrimination" had occurred in law schools because minority students with uncompetitive combinations of LSAT and UGPA were admitted. Instead, it appears that the issue of "preferential admissions" seems to arise because of the emphasis placed on LSAT scores during the admissions process.

D. Predictive Value of Minority Applicants' College Grades

Thus far the general value of college grades as indicators of an applicant's likely future grades in law school has been explored. As discussed above, college grades reflect various qualities thought to be important to successful academic performance, they are quite reliable despite the variety of courses and majors of applicants, they differentiate white students about as discretely as do LSAT scores, and they appear to resist efforts to adjust grades from different colleges as an aid in predicting law school grades. There may be those, however, who will question the particular value of UGPAs submitted by minority candidates. These concerns involve claims that the predictive validity of grades earned by minority students from any college differs from the validity reported for grades earned by white students.

1. *Comparability of Grades Awarded by Traditionally Black Colleges*

Today there are 84 traditionally black four-year colleges.[58]

These institutions of higher education have been the source of most black college graduates throughout the last century. Even after the advent of serious recruiting of black students by predominantly white colleges, these colleges have remained significant sources of black college graduates. In 1973-74, 45 percent of the blacks receiving baccalaureate degrees earned their degrees at predominantly black colleges.[59] In contrast to this significant proportion of graduates from traditionally black colleges, over three-quarters of black law students interviewed in one study attended predominantly white undergraduate institutions.[60]

This disparity between the proportion of black students graduating from traditionally black colleges and the proportion of graduates from these colleges attending law school may be interpreted as evidence that admission officials are discriminating against graduates from black colleges. While this may be the case, the above statistics do not necessarily prove the existence of such a practice.

It is possible that fewer graduates of black colleges attain high grade point averages. This hypothesis would be consistent with the general trend, noted above, that colleges with less prestige also awarded lower average grades. It would support inferences that black colleges are conscious of the need to maintain academic standards in order to avoid charges that the degrees they award are worthless. An element of maintaining academic standards involves stricter adherence to grading standards which results in lower average grades being awarded at these colleges. As a consequence, however, a larger proportion of graduates from these colleges might be considered uncompetitive applicants to law school because of their relatively low UGPAs.

There remains the danger, however, that graduates from black colleges who have achieved high UGPAs will have their grades devalued during the admissions process. This would be an unfortunate result which is not warranted by vague references to the quality of the black college in question. The fact to be highlighted is the relatively rare accomplishment of getting high grades at a school with rigorous grading standards. To devalue these grades would defeat the purpose of faculties at these schools in maintaining rigorous grading standards. To devalue the grades of the top graduates from these schools can only encourage a trend toward the very grade inflation which admission officials deplore.

2. *Policy Considerations in Evaluating Graduates from Traditionally Black Colleges*

There remain two very significant policy considerations in evaluating the academic performance of graduates from black colleges. The first involves the mission of the traditionally black college and the free choice of black students. An important element in the mission of black colleges is the provision of a supportive atmosphere within which black students can pursue their academic interests. To devalue the grades these students earn at these colleges places the students in the uncomfortable position of choosing an attractive undergraduate institution or of choosing a college which will increase their prospects for admission to law school. This is not to say that these students could not succeed at a predominantly white college, but merely that their choice of college should not be limited to the exclusion of a black college they might otherwise prefer to attend but for the decreased admission opportunity to law school attendance at a black college may represent.

The second policy consideration involves the continued segregation of higher education which persists in several states. Litigation continues over the constitutionality of dual college systems maintained in several states.[61] The fact of this dual school system is undeniable, however. For those black students who prefer to attend a state college, if only to reap the advantage of lower tuition which state-supported colleges typically offer, the choice of which state college to attend is limited to the selection of one segregated college or another. Regardless of their aptitude or ability, black students are segregated into some colleges, while white students, regardless of their aptitude or ability, are admitted to white colleges which may enjoy a favorable reputation. Those black students who possess high aptitude and ability can be expected to excell at these segregated colleges and to earn relatively high grades. For a law school to devalue these high grades in relation to grades earned by white students at segregated colleges is to perpetuate the "incidents and badges of slavery" which segregated education represents. When this grade devaluation is practiced by law schools, the gap between theoretical constitutional rights and enforceable constitutional standards becomes even further accentuated.

3. *Predictive Value of College Grades of Minority Applicants*

The general content of college grades as an indicator of a variety of personal and academic factors is the same for grades earned by white students or by minority students. Certain special characteristics of the grades earned by minority students have received consideration in the past and deserve mention at this point.

The first important consideration is the trend in grades earned during undergraduate years. The Council on Legal Education Opportunity (CLEO) takes particular interest in students whose performance has improved during college. As described in the materials distributed to prospective CLEO students:

> Frequently, the CLEO participant is one who as an undergraduate may have experienced initial difficulty in adjusting academically to the college environment. His/her cumulative grade point average, however, reflects an upward trend characterized by marked improvement during the third and fourth years.[62]

Research which has investigated the predictive value of an observed improvement in grades during college has unfortunately not been designed to elicit a reasonable hypothesis to be tested. Instead, the improvement in grades during college has been used to predict first year law school grades. Yet, the results have shown that the degree of improvement in grades during college does not improve prediction of first year law grades.[63] Not surprisingly, grades during the first year of college are the best predictor of grades during the first year of law school.[64] The more plausible hypothesis that improvement during college predicts improvement during law school has not been tested during the previous research efforts. The fixation on the prediction of first year grades only is a constant flaw in analyses of admissions critera used to select prospective lawyers. This fixation is particularly inappropriate, however, when the explicit purpose of the investigation of transcripts is to discover improvement trends. Instead, improvement trends in law school should also be investigated.

One recent report infers that UGPA is generally a less valid predictor for minority law students than it is for white law students. This inference is based on a review of 31 law schools in which UGPA received less weight in regression formulas developed for black law students than it did in formulas developed for white students.[65] Although this tendency is a minor one, usually not statistically significant, it may suggest to some that LSAT should receive more weight rather than less weight in evaluating minority applicants. Indeed, the author of the study even suggested investigating grade adjustment schemes which would adjust grades *differentially* for black and white colleges.[66] However, this type of adjustment is not warranted, partly because the study examined black students—not black colleges—and because of theoretical considerations.

One must recall how the validity of a predictor can be impaired. If there were a tendency for high UGPA students to earn low law school grades, the inference that UGPA should be deemphasized might be warranted. However, an equal decrease in predictive validity would result from a tendency for low UGPA students to earn relatively high law school grades. This could be expected to occur at schools which examine other criteria during the admissions process—a typical procedure in "Special Admissions" programs. A tendency for students so selected to earn relatively high law school grades in comparison to their UGPAs would not indict the general predictive validity of UGPA, but would instead reinforce the beliefs of admission officials that other factors can usefully be taken into account in selecting minority students. Current research does not distinguish between these two situations, but the actions of admissions officials suggest that they would be likely to believe the second hypothesis to be the reason for the results reported.

A related trend influences the apparent predictive validity of relatively low UGPAs. This trend is the tendency for minority law students to be older than white students. One study showed that 37 percent of all minority students were 26 years or older when they entered law school, with two-fifths of the Mexican-American law students falling into this older category.[67] In contrast, the average age of law students in another study was 23.[68] Insofar as grade inflation has made the UGPAs of younger applicants appear to be higher, older students with lower UGPAs may earn good law school grades and seem to prove that UGPA was a poor predictor. Yet this process should not prompt the conclusion that more weight should be given to LSAT scores, particularly when one recalls that older candidates tend to score lower on the LSAT as well. (See III-B-2.)

NOTES

1. In 1950 only 16 percent of the ABA-Approved law schools required four years of college. York & Hale, "Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook" 26 J. Legal Ed. 1, 2 (1973); and only 45 percent of the nation's lawyers had received college degrees. Blaustein, "College and Law School Education of the American Lawyer—A Preliminary Report of the Survey of the Legal Profession." 3 J. Legal Ed. 409 (1951).

2. See Chapter IV, notes 39, 40, *infra.*

3. Willingham, Breland, et. al., "The Status of Selective Admissions," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 65, 125 (1977).

4. Patton, "The Student, The Situation, and Performance During the First Year of Law School, 21 J. Legal Ed. 10, 21 (1968).

5. Consalus, "The Law School Admission Test and the Minority Student," 1970 Toledo L. Rev. 501, 513 (1970).

6. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 397 (1974) (testimony of F. Hart).

7. Willingham & Breland, et. al., "The Status of Selective Admissions," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 126, 127 (1977) citing Reilly & Powers, "Extended Study of the Relationship of Selected Transcript Information to Law School Performance," in 2(LSAC-73-4) (1976) and Willingham, "Erroneous Assumptions in Predicting College Grades," 10 Journal of Counseling Psychology 389-394 (1963).

8. Schrader & Pitcher, "The Advanced Tests of the Graduate Record Examinations as a Predictor of Law School Grades," in 2(LSAC-70-5) at 47, 65 (1970).

9. Leonard, "DeFunis v. Odegaard: An Invitation to Look Backward," 3 The Black Law Journal 224,229 n. 43 (1973).

10. Carlson & Werts, "Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results," in 3(LSAC-76-1) at 211, 220 (1976.)

11. Law School Admission Council, *Law School Admission Bulletin and LSAT Preparation Material* 17 (1979).

12. Sewall, "When An 'A' Deserves a 'B'." *Newsweek* 72 (Sept. 24, 1979).

13. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 321 (1972).

14. Sewall, "When an 'A' Deserves a 'B'." *Newsweek* 72 (Sept. 24, 1979).

15. Schrader & Pitcher, "Effects of Differences in College Grading Standards on the Prediction of Law School Grades," in 2(LSAC-73-5) at 433, 444 (1973).

16. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 18 (1979).

17. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 267 (1972).

18. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 604 (1977) (table 16).

19. *Id.* at 574.

20. Juola, "Grade Inflation in Higher Education—1979. Is it Over?" Paper presented at the annual meeting of the National Council on Measurement in Education, Boston, April 1980, p. 1.

21. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 604 (1977) (table 16)

22. York & Hale, "Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook," 26 J. Legal Ed. 1, 4 n. 17 (1973).

23. Turnbull, McKee, & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 268 (1972).

24. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 20 (1979).

25. *Id.*

26. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 309 (1972).

27. *Id.* at 299.

28. B. Pitcher, W. Schrader & J. Winterbottom, *Law School Validity Study Service* 26 (1973).

29. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 313-14 (1972).

30. B. Pitcher, W. Schrader & J. Winterbottom, *Law School Validity Study Service* 26 (1973).

31. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 398 (1974) (testimony of F. Hart).

32. Boldt, "Efficacy of Undergraduate Grade Adjustment for Improving the Prediction of Law School Grades," in 3(LSAC-76-4) at 369, 377 (1976).

33. Schrader & Pitcher, "Adjusted Undergraduate Average Grades as Predictors of Law School Performance," in 1(LSAC-64-2) at 291 (1964); Reilly & Powers, "Extended Study of the Relationship of Selected Transcript Information to Law School Performance," in 2(LSAC-73-4) at 405 (1973); Schrader & Pitcher, "Effects of Differences in College Grading Standards on the Prediction of Law School Grades," in 2(LSAC-73-5) at 433 (1973).

34. Boldt, "Efficacy of Undergraduate Grade Adjustment for Improving the Prediction of Law School Grades," in 3(LSAC-76-4) at 369, 371 (1976).

35. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 274 (1972).

36. R. Boldt & R. Simpson, *Aptitude Moderation of Undergraduate Grades to Predict Law School Grades* 2-3 (1979).

37. Braden, "Use of the Law School Admission Test at the Yale Law School," 3 J. Legal Ed. 202, 205 (1950).

38. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 330 (1972).

39. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 24 (1979).

40. R. Boldt & R. Simpson, *Aptitude Moderation of Undergraduate Grades to Predict Law School Grades* 6 (1979).

41. *Id.* at 9 (table 2).

42. Hills & Raine, "Response Sets and Grades," in 1(LSAC-58-3) at 141, 144 (1958).

43. For an informative discussion of alternative criteria useful for evaluating incoming law students and models for incorporating these criteria into an admissions process, see S. Brown & E. Marenco, *Law School Admissions Study* 39-61 (1980).

44. Boldt, "Efficacy of Undergraduate Grades Adjustment for Improving the Prediction of Law School Grades," in 3(LSAC-76-4) at 369, 374 (1976).

45. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 291, 296 (1972).

46. See note 15 *supra*.

47. This need not also indicate that there is a strong correlation between the UGPA and LSAT scores of gradautes from these high LCM colleges. Some graduates may earn very high LSAT scores despite relatively modest UGPAs and vice versa. The text merely indicates a reason why additional adjustment of UGPAs from this school on the basis of LSAT scores is unlikely to improve the predictive power of the grades.

48. This does not mean that the graduates of low-status schools ought to have their grades inflated during the admissions process. It merely suggests that the prevalent instinct to devalue the grades is not warranted.

49. See Brief for the Law School Admission Council as Amicus Curiae at 15, *Regents of the Univ. of California v. Bakke*, 438 U.S. 265 (1978).

50. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 604 (1977) (table 16).

51. Brief for the Law School Admission Council as Amicus Curiae at 21, *Regents of the Univ. of California v. Bakke,* 438 U.S. 265 (1978).

52. Stevens, "Law Schools and Law Students," 59 Vir. L. Rev. 551, 572 (1973).

53. Gozansky & DeVito, "An Enlightened Comparison: The Relevant Strengths and Weaknesses of the CLEO Program of Emory University," 1970 Toledo L. Rev. 719, 737 (1970).

54. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 612 (1977).

55. *Id.* at 605.

56. Willingham & Breland et. al., "The Status of Selective Admissions," in Carnegie Council on Policy Studies in Higher Education, *Selective Admissions in Higher Education* 65, 104 (1977) (table 8).

57. Smith, "Comment" 43, 48 on Pettigrew, "The Effects of the *Bakke* Decision: An Initial Look," in *Bakke, Weber, and Affirmative Action* (1979).

58. Schrader, "Relationships Between Characteristics of Minority Group Students Who Entered Law School in 1968, 1969, and 1970," in 2(LSAC-74-6) at 609, 616 (1974).

59. Brief of the Law School Admission Council as Amicus Curiae at 11, *Regents of the Univ. of California v. Bakke,* 438 U.S. 265 (1978).

60. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 The Black Law Journal 527, 528 (1975).

61. *Adams v. Califano*, 430 F. Supp. 118 (D.C.D.C. 1977).

62. Council on Legal Education Opportunity, *All About CLEO* 4 (1979).

63. Reilly, "Contributions of Selected Transcript Information to Prediction of Law School Performance," in 2(LSAC-71-4) at 133, 141 (1971).

64. Reilly & Powers, "Extended Study of the Relationship of Selected Transcript Information to Law School Performance," in 2(LSAC-73-4) at 405, 414 (1973)

65. Powers, "Comparing Predictions of Law School Performance for Black, Chicano, and White Law Students," in 3(LSAC-77-3) at 721, 747 (1977).

66. *Id.* at 751

67. Schrader, "Relationships Between Characteristics of Minority Group Students Who Entered Law School in 1968, 1969 and 1970," in 2(LSAC-74-6) at 609, 620 (1974).

68. Evans & Rock, "A Study of the Effects of Moderator Variables on the Prediction of Law School Performance," in 2(LSAC-73-2) at 357, 373 (1973).

IV. The Law School Admission Test

A. Evolution of the Law School Admission Test

"The LSAT is a program involving five national test dates, a registration procedure, security precautions, regular and controlled testing centers, and a council of law educators to set policy for the program."[1] While this report will focus primarily on the test itself, the security precautions, testing centers, and decisions of the Law School Admission Council are all relevant to the overall value of the LSAT.

Faced with a flood of returning veterans from World War II who sought a legal education with GI benefits, law schools felt a need for a standardized test which would place all applicants on a common scale for comparison and would reduce the pressure of numbers in sorting through the increased flow of applicants.[2] The Educational Testing Service (ETS), which had been recently established in 1947, went through its files of test questions developed for other testing programs to select questions which would probably be relevant to the study of law.[3] The assembled questions were pretested on a group of law students in 1947. In 1948 the test was "normed" on law school applicants to establish a scoring scale with a mean score of 500 and a standard deviation of 100, with a range of possible scores from 200 to 800.[4]

The original test had 10 sections, but in 1951 the testing time was significantly reduced and the number of sections limited to five.[5] Subsequent changes in question-types were made in 1956,[6] 1963,[7] and 1970.[8] Time allocations have also varied within similar question-types. Yet the scoring scale has remained unchanged, so that scores obtained at different administrations may be compared in the admissions process.

This report reviews research conducted during the entire history of the LSAT. It is possible that the results obtained in some studies would not be replicated with the current version. Yet the report proceeds on the assumption that no such variation in results would occur—an assumption apparently in keeping with the spirit of the development and evolution of the LSAT scored on an equated standard score scale.

B. Taking the Law School Admission Test

On several prescribed testing dates, candidates assemble at designated test centers. Each brings several soft-leaded pencils, a watch, and two pieces of identification, one of which has a picture. After placing a thumbprint on the answer sheet, candidates work through seven separately timed sections, each with their own set of rules and directions. In some sections the rules change within the section. The test, including a 5-minute break, takes 215 minutes.

Candidates entering the test center represent a wide variety of backgrounds, economic situations and preparation routines. One in four candidates is taking the LSAT over.[9] A growing number have taken special LSAT preparation courses. Some are calm; others are visibly shaken.

Candidates who ought to receive the same "true score" on the test will actually receive widely varying scores. Two out of three candidates with the same hypothetical "true score" will receive actual scores that are +/-30 points of the "true" score"; the remaining third will receive scores outside of that range.[10] Students with high socioeconomic backgrounds will earn higher average scores than those with average or low socioeconomic backgrounds.[11] Students with high anxiety will earn lower scores than those with low anxiety.[12] When the two factors are combined, the difference in average scores is considerable. Students with low incomes and high anxiety received an average LSAT of 505 in one study; high income students with low anxiety averaged 622 on the test.[13]

Candidates who are repeating the LSAT will earn higher scores, on the average, than they did the first time.[14] Some who enter the room are imposters, taking the test for another individual who has paid the imposter.[15]

The actual test situation puts considerable time pressures on candidates. The Sample LSAT contains 190 questions to be answered in 155 minutes. Many candidates will not answer all questions. In addition:

> it is unquestionably true that the great majority of candidates are under the *threat* of not finishing, and this includes most of those who actually do succeed in reaching all the items. Under this threat, the student's entire approach to each item is of necessity based on snap judgment, not on considered and deliberate thought.[16]

Candidates are encouraged to guess, since the total score is computed on the basis of the total number of correct answers. Nonetheless, research indicates that the tendency to skip items without hazarding a guess is a stable characteristic of certain candidates.[17] Those candidates who have the luxury of sufficient time to reconsider their original answers are likely to raise their scores by changing answers.[18] Some indication of this effect can be noted from the fact that those retaking the same form of the LSAT achieve higher average score gains than those retaking the LSAT with a different form.[19]

C. The Impact of Coaching Courses on LSAT Scores

The growing industry of commercial coaching schools offering special preparation for the LSAT presents a serious challenge to claims that the test measures relatively permanent aptitudes for the study of law and that the test puts all candidates on an equal footing in exhibiting their talents. The nationwide industry coaches 50,000 individuals annually for all standardized tests and has a total annual sales volume of $10,000,000.[20] A total of 12 different companies coached over 12,000 individuals in 1975 and 1976 for the LSAT.[21] In addition, a number of universities, some of which include a law school which requires the LSAT from candidates, also offer courses to an estimated 5,000 students in preparation for the LSAT.[22] Certainly there are a large number of educators, entrepreneurs and testtakers who believe that intensive preparation for a specific standardized test can improve scores.

Research evidence is accumulating which substantiates these widely held beliefs. Most evidence concerns the Scholastic Aptitude Test (SAT) used during the college admissions process. The composite presented by a number of past studies of coaching for the SAT indicates that the SAT-Verbal scores can be raised by 25 points and the SAT-Math scores can be raised by 33 points.[23] A recent study by the Federal Trade Commission (FTC), as reanalyzed by ETS, found that students coached at one school scored between 20 and 35 points higher than their uncoached counterparts on both the Verbal and Math sections.[24] The

FTC study of LSAT coaching courses, which was not reanalyzed by ETS, concluded that all but one course in the study were "extremely effective" for students with low GPAs.[25] Various estimates of the precise score gains are possible. One confounding factor in the LSAT analysis is the magnitude of score gains "normally" occurring from one attempt to the next. The FTC study noted "abnormally large control group increases."[26] These uncoached candidates earned score increases which themselves cast doubt on claims that the LSAT is measuring a relatively permanent aptitude. In addition, the FTC study noted "the relatively low correlation between GPA and LSAT scores"[27] which further suggest that the LSAT is not measuring academic abilities as they are reflected in college grades.

The overriding concern raised by reports that special coaching courses are effective at raising scores is that the tests do not validly measure what is labeled "aptitude." One recent article reviewed coaching research and criticized the SAT as a consequence. According to the authors: "If aptitude is defined as 'the capacity for learning' (Webster's), the SAT has demonstrated no relevance at all."[28] A similar concern was articulated in a subsequent report issued by ETS:

> if coaching or special preparation programs may lead to substantially increased test scores without improving the abilities measured, there are important implications for testing practice. Such an outcome would imply that the test or the testing experience entails uintended sources of difficulty, such as anxiety over being evaluated or unfamiliarity with different item formats or test-taking strategies, that can be overcome by special preparation. Issues of equity of access to such special preparation become important to the extent that individual differences in test-taking skills per se influence test scores.[29]

The issue of equity of access to coaching schools, which charge between $40 and $250 for LSAT courses,[30] is a significant one. Data on SAT courses reveal that "There are, in fact, systematic differences between coached and uncoached students with respect to such background characteristics as high school achievement, race and self-reported parental income."[31] At one SAT school charging $250 and found to be the most effective by the FTC "50 percent of the students reported parental incomes in the top category of more than $30,000 a year."[32] The "very strong relationship between attending coaching schools and family income" led one ETS researcher to hypothesize "that self-selection operates primarily on the basis of family income."[33] Although blacks were less likely to enroll in SAT coaching courses,[34] those who did "reported parental incomes ranging from $5,000 to more than $30,000 per year, with a mean of $18,500."[35] For students attending coaching schools, their race or ethnic backgrounds may differ, but their family incomes are relatively similar. When ETS compared black and white students according to their parental income at one SAT coaching school charging $75, the review's author noted that "in this sample, unlike the general population, these two variables are uncorrelated."[36]

Although minority students and students with low family incomes enroll in coaching courses less often, they appear to gain the most from the courses when they do enroll. The FTC study of SAT coaching included 21 blacks who were included in three separate analytical groups. When the score gains of these black students were compared with the gains registered by whites, the differences were large and statistically significant. The three groups enjoyed score gains above those of whites on the SAT-Verbal of 47, 25 and 53 points in the three comparison groups.[37] Similarly, eight Asian students gained 46 points more than the average gain of white students.[38] Moreover, "students reporting low family income exhibited significantly larger coaching/self-selection Verbal effects than those reporting high family income."[39] Overall, the most significant predictor of large gains from coaching was being black, and the next most significant predictor was low family income. Nevertheless, "the effect of self-reported parental income and the effect of black vs. nonblack are essentially separate from each other."[40] Like so many things, the disadvantages associated with being black and being poor are additive; wealth won't compensate for racism. The less exhaustive analysis of LSAT coaching for different racial groups suggests that at least black and Puerto Rican students with high GPAs tend to benefit more from coaching than do whites with similar grades.[41] This finding is consistent with other evidence in this report indicating that blacks earning high college grades are not similarly rewarded with high LSAT scores. (See §III-C-1). Yet coaching alone does not close this gap. "Despite coaching, marked LSAT score differences persist between whites and non-whites."[42]

The specific aspects of each question-type in the LSAT will be explored to examine the benefits which coaching and test-wiseness may bestow. At this point, it is sufficient to suggest that mounting evidence points to the conclusion that "aptitude" is not being measured in any pure sense by the LSAT or SAT. The action to be taken on the basis of this evidence differs depending on the actor. Students are hard-pressed to ignore the claims of coaching schools and are increasingly likely to pay course tuitions in the belief that their scores will improve. Test-makers "should strive to reduce construct-irrelevant test difficulty wherever possible—for example, by avoiding arcane item types, complicated instructions, esoteric or culture-specific content, undue speededness, and the like."[43] The courses of action available to admission officials, who are required by accreditaion standards to consider LSAT scores, are less obvious. These officials are aware that they are comparing scores from candidates who have been coached with those who have not. Yet these two groups are not easily identified and the possible adjustments in evaluation of test scores are not published. At the present time, only uncertain discomfort accompanies reports that LSAT scores can be improved by coaching. Few can ignore the evidence, but even fewer can improve their understanding of the proper role of the LSAT in the admissions process on the basis of such evidence.

D. Validity and Bias of the Sample Law School Admission Test

The actual questions which candidates must answer on actual forms of the LSAT remain secret. Candidates are told their total score on the LSAT and Writing Ability (WA) sections of the test, but not given the questions and correct answers of the test form yielding these scores. This situation will change in the coming year, with the passage of the Truth in Testing legislation in New York.[44] Thus, the present study must be content to review those questions made available to candidates in the *Law School Admission Bulletin and LSAT Preparation Material* distributed to candidates during 1979-80. These questions are unrepresentative to the extent that particular care was taken by the test publishers to publish only questions which appear satisfactory. In other words, the quality of the published questions may be higher than the quality of those which remain secret. The contrary assumption that these questions are of poorer quality than secret questions does not seem warranted. Nonetheless, the question analysis which follows omits two important factors which may affect the test's validity and bias.

1. *Speed*

The leisurely review of questions, answers and explanations is useful for research purposes, but does not simulate the time pressures encountered by actual test takers who may experience heightened anxiety under these pressures. Moreover, it does not allow the process of snap judgment to come into play, with its attendant danger of ignoring bias or avoiding complexity. The literature on the effect of speed in testing suggests that this is an importat consideration.

Several studies indicate that speed pressures during a standardized testing situation may impair the test's validity. One recent study observes: "(a) rapidly growing body of research indicates that there is neither a strong nor a consistent relationship between rate of response and response accuracy."[45] The study notes additional evidence suggesting "that rate of response is more consistently associated with extraneous subject attributes, such as personality traits, than it is with the ability to respond correctly."[46] The impact of speed is found both in the total score, whereby candidates who answer early questions correctly may not complete the entire test, and in the predictive validity of the test.One study conducted at the U.S. Naval Academy showed that when tests were administered under strict speed conditions and extended time conditions, the unspeeded test consistently showed a higher validity in predicting grades at the Academy, regardless of the subject matter of the test.[47]

One investigation reveals that the speed requirements of the LSAT may have a discriminatory impact. Students tested at fee-free centers on predominantly black campuses finished fewer questions and gained more points than students tested at regular testing centers when speed pressures were relieved. If, as is likely, the students tested at the fee-free centers were predominantly black, one could infer that the LSAT's speed requirements add bias to the test. Nevertheless, the study concluded that the overall differences in scores produced by reducing time pressures was insufficient to account for the wide gap in overall test scores between the two racial groups.[48] This study, however, is seriously flawed.

The study drew candidates from the group taking the LSAT at testing centers located on predominantly black college campuses in February 1970—the only testing date when fees were waived. That no fees were required and that most candidates applying to law school in 1970 would have already taken the LSAT at an earlier testing date indicate that the motivation of students included in the study may not equal the motivation of students taking the LSAT during the October and December administrations. This hypothesis is supported by the fact that large numbers of candidates from the fee-free centers dropped out of the test without completing many items.[49] In an attempt to avoid the motivational problem, a second study was conducted which drew students taking the LSAT in October and December.[50] Although the data in the replication study are not comparable to the original study's data, the study concluded again that speed was not a significant cause of lower scores for black students despite the fact that there was a statistically significant relationship between the race of a student and the score gains obtained under relaxed time pressures.[51]

Thusfar the issue of bias caused by time pressures has only been explored on reading comprehension sections of the LSAT, which have now been eliminated from current forms. It would be useful to reexamine the impact of speed on scores obtained on the Data Interpretation subtest. This subtest is not completed by many candidates,[52] and produces the lowest relative scores among black candidates.[53] It may be that the unusually low scores of black candidates on this section is a result of the unusually stringent time pressures involved in completing the section. Evidence about the effect of speed in completing a reading comprehension subtest is not directly relevant to this inquiry.

2. *Defective Questions*

Each question appearing in the *Bulletin* is presumably an example of a question which is actually scored on a form of the LSAT. The complete sample LSAT provided in the *Bulletin* is a "retired form of the test with the correct answers."[54] Yet not all questions which appear on an actual form of the LSAT are scored. Some questions are "pretested" on each form. The response patterns on the unscored questions are compared to the reponse patterns on scored items. Those items which do not fit the pattern of responses of scored questions are then reexamined for ambiguity or other defects. Some of these questions are revised, some are discarded. It is not public knowledge how many questions on each form are experimental. Information obtained as part of this investigation reveals that the number of scored items on forms of the LSAT remains constant. "The number of unscored items varies from test to test. In recent forms 30 to 45 minutes of testing *time* has been devoted to unscored items."[55]

No information is available to indicate what proportion of the pretested questions are eventually revised or discarded because statistical analysis revealed discrepancies in response patterns. During the early phases of the LSAT slightly more than half of the items which were tried out experimentally appeared in a final form of the LSAT.[56] On the Multistate Bar Examination (MBE), also produced by ETS, the questions are not pretested but put on the 200 multiple-choice test with the expectation that they will all contribute to the final score of candidates. Yet, after each administration of the MBE, item analyses similar to, but not as rigorous as, the analyses performed on the LSAT pretest questions are conducted.[57] On the February 1973 MBE 5 out of 200 questions were considered defective after examining the response patterns of candidates.[58]

Candidates encountering these defective pretest items on an actual form of the LSAT must assume that these questions will be scored. Those recognizing their defective nature may be unduly affected by these questions by spending inordinate time trying to unravel the ambiguity, or by attempting to achieve consistency in their answers between questions which will be scored and those which will eventually be discarded because pretesting indicates the defect. In general, then, the presence of these questions which are eventually acknowledged as defective will lower the careful candidate's estimate of the entire test and may adversely affect such a candidate's performance on other questions. The sample booklet may be free of such questions and therefore overestimate the quality of the actual questions encountered by candidates.

3. *Content of Question Types*

Each of the major sections and item-types must first be evaluated for their face validity—does this type of question seem to have relevance to the study of law. This face validity should not be confused with the requirement that tests have content validity. Content validity involves the similarity between the complete content of the test and the content of the performance to be predicted. Thus, the test format of selecting among multiple-choice options and the speed pressures are both elements of the content of the test. If one typically encounters situations similar to the face validity of a question-type, but is neither permitted to select among a predetermined set of options, nor required to decide within a very short period of time, the question lacks content validity.

If certain types of items lack this face validity some students will lose motivation and score below their true potential on items which had face validity. If a student is reluctant to take the LSAT in the first place, the likelihood of adversely affecting their motivation by requiring them to answer questions with no obvious relevance to the study of law is increased. Students who have had a history of poor results on standardized tests are likely to approach the LSAT with reluctance. Minority group candidates are likely to have had this poor testing history.

In addition to face validity, each item type must avoid certain pitfalls which may reduce its validity. For example, if speed is irrelevant to the underlying ability to be tested, then a test with severe time pressures may tap test-taking skills but not underlying cognitive skills. So too, if the question seems related to an actual legal skill, but approaches that skill in an artificial way, irrelevance may impair validity.

All questions reviewed in this chapter are drawn from the *Law School Admission Bulletin and LSAT Preparation Material* distributed to candidates in 1979-80. To avoid any possibility of introducing errors during the transcription process, quotations and sample questions from this booklet have been reproduced directly from the original typeset.*

a. Logical Reasoning

Lawyers are presumed to be logical. Much of their work, both written and oral, involves persuasion through argumentation and analysis. Those prone to logical fallacies are unlikely to be considered good lawyers. Thus, the title of this section seems quite reasonable to include in a legal aptitude test. Yet the description of the section in the *Bulletin* distributed to candidates suggests that a common set of experiences between those giving and those taking the test would increase a student's probable score on the section. The description states:

> The questions sample a variety of abilities that can be considered subtypes of the ability to reason logically and critically. Questions measuring this ability require that you be able to (1) recognize the point of an argument, (2) perceive presuppositions essential to or supporting an argument or chain of reasoning, (3) draw conclusions from given evidence or premises, (4) infer missing material (such as implied arguments or antecedent and follow-up statements), (5) apply principles that govern one argument to another argument, (6) identify methods of argu-

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> ment and persuasion, (7) evaluate arguments, (8) differentiate between statements of fact and opinion, (9) analyze evidence and (10) assess claims critically.

With so many potential flaws to be found in statements, it is not implausible to postulate that different candidates will find different flaws. However, without an opportunity to explain one's multiple-choice answer, such logical analysis will be considered erroneous. In addition, without such explanations, this investigation cannot fairly evaluate the quality of the questions. In the subsequent discussion of potentially biased questions this report will offer plausible explanations of how questions in this and other sections may be biased. However, without actual response patterns and explanations for erroneous responses, these explanations must remain hypotheses.

The reader may, however, consider whether a candidate following logic similar to the Report's ought to be considered illogical and likely to be a poor lawyer. This is particularly true when one reflects on the attributes of legal reasoning. Since each client ought to be represented by a competent lawyer, the lawyer is faced with the task of making logical arguments which will benefit the client's interests. Often this requires manipulating the facts and the legal principles in ways different than those followed by opposing counsel. Each can be expected to employ fundamental logical principles, but can also be expected to arrive at different results. A true test of legal ability might therefore involve the various manipulations of facts and law that are possible from a given situation. Indeed, this is the format of the typical law school examination. (See §VI-B.) Yet candidates exhibiting too much creativity during the LSAT may be penalized to the extent that they will be excluded from law school and never given the opportunity to demonstrate a general facility for logical manipulations.

An additional criticism of this type of item is appropriate. It involves the interaction of a candidate's response style with the options offered as the possible answer.

> (A) response style is a habit or a momentary set causing the subject to earn a different score from the one he would earn if the same items were presented in a different form. In true-false tests particularly, some people have the habit of saying "true" when in doubt, while others are characteristically

> suspicious and response "false" when uncertain. If the tester has included a large proportion of true statements on his test, the acquiescent student will earn a fairly good score even if his knowledge is limited.[59]

This report cannot identify the proportion of answers which depend on a "true" finding rather than a "false" finding. It can merely note the existence of true-false questions on the test. This is not obvious, since all answers involve five options. Yet Question 11 of the Sample LSAT is an example of a disguised true-false question.

Questions 10-11

Neither Condorcet nor Comte denied that the increase of knowledge brings evil with it. But they affirmed or implied that this increase, if it continues, must eventually cure these evils and others also. It never occurred to them that the knowledge needed to cure these evils might be available and yet not be used. Every man, they thought, desires happiness. If men are unhappy and can discover the causes of their unhappiness and how to remove those causes, then it is highly probable that society will make use of this knowledge to bring about good. Unfortunately, this argument is not so convincing as it looks.

11. Which of the following is (are) assumed in the argument of Condorcet and Comte as summarized by the author?

I. Knowledge will increase indefinitely.
II. Arguments that are merely probable are the best we can expect in human affairs.
III. Arguments that apply to individuals apply equally well to groups.

(A) II only (B) III only (C) I and II only
(D) II and III only (E) I, II, and III

In order to answer this question correctly, the candidate must first decide whether I, II, and III are individually "true" or "false" and then choose the option from A to E which correctly reflects the complete judgment about the combination of each individual statement. Thus, the question format is a disguised true-false question, with the answers scored in a group of 3. If a candidate agrees with one of the desired choices, but disagrees with another desired choice, the candidate is given credit for neither answer.[60] True-false questions are being scored in groups. The flaws with true-false questions are not necessarily eliminated. Yet the advantage of differentiating candidates quickly with only a few such questions is apparently significant enough to retain such question-types on the test.

b. Practical Judgment

It is difficult to argue that those lacking practical judgment will be good lawyers. Yet it does not follow that the questions contained in this section justify the inference that those scoring low on the section lack practical judgment. The title is a contributing factor to the "overinterpretation" of test scores in evaluating candidates. A less universal title to the section may deflate its apparent significance. The testing profession often discourages overinterpretation of test scores.[61] Yet, as one ETS researcher candidly admits:

> The overinterpretation that occurs is not without its encouragement within the profession. But when these tests are represented as assessments of highly valued parts of the spectrum, the issue of test bias is legitimately raised, since it is a great leap from being unable to work a few problems on a paper-and-pencil test to being declared lacking in practical judgment.[62]

A more accurate assessment of the content of the section is contained in the subsection titles of: "Data Evaluation" and "Data Analysis." In essence, these questions involve the analysis of a series of business decisions based on a reading passage describing the business situation. In the Sample LSAT all 25 questions relate to one passage about one business situation.

The content validity of this section depends on the area of law one wishes to practice. Those seeking to enter tax law, corporate law or antitrust law will probably encounter situations similar to those on this section. Yet others aspiring to the protection of civil liberties, civil rights, or criminal justice may encounter such business decisions only rarely, if ever, during their actual practice. To make their entrance to law school contingent upon scoring well on the Practical Judgment section seems unjustified.

The practical effect of this item type can be seen in the relative scores of candidates majoring in different fields. Engineering majors score highest on this section, followed by Natural Science majors and Economics majors. Candidates majoring in the Humanities do worse on the section, with History, Government and Political Science majors also scoring below average.[63] The indirect effect which this section has on the opportunities for legal education of students majoring in various fields is at odds with the long-standing tradition of the legal profession to avoid prescribing an undergraduate curriculum. No state has attempted to lay down specific requirements for the content of prelegal education; rather the Association of American Law Schools merely advises prospective law students to avoid undergraduate law courses,[64] and the American Bar Association limits courses "without substantial intellectual content" to ten percent of the credit toward the college preparation requirement unless the candidate fulfills the requirements for a bachelor's degree.[65]

Since the legal profession has avoided direct control over undergraduate curricula, it is doubtful whether the indirect preference for certain major fields is justified. Moreover, since a major rationale of the LSAT is to put candidates from a variety of undergraduate majors on a common footing,[66] it seems inconsistent to favor students from certain majors on the test.

The preference given to candidates likely to engage in quantitative business decisions on the LSAT also seems inconsistent with the treatment of business law on the bar examination. The MBE includes six subsections including Property, Torts, Criminal Law, Civil Procedure, Evidence and Constitutional Law. No heavy emphasis is placed on quantitative skills or business law. California has adopted a program to certify lawyers specializing in taxation.[67] This specialist certificate is awarded after the attorney has already practiced law for five years. This method of insuring a measure of competence among lawyers specializing in business and tax practice seems preferable to using the LSAT to screen for such ability among all prospective law students. It is ironic that California's Taxation specialty certificate is the exception, while the requirement that aspiring lawyers exhibit excellence in analyzing business decisions is the rule.

The discriminatory impact of the Practical Judgment section and the Data Interpretation section (which appeared in the *Bulletin* and Sample LSAT distributed in 1978-79) is considerable. These two subtests produced the lowest relative scores among black candidates.[68] One may not consider an attraction to corporate practice to be an element of cultural bias. Nonetheless, if the LSAT is systematically lowering the scores of the average black candidate, and favoring those black candidates who aspire to certain legal specialties, while disadvantaging black applicants who aspire to civil rights or civil liberties practices, the social significance of this preference system cannot be overestimated.

c. Quantitative Comparison

The *Bulletin* describes the Quantitative Comparison section as follows:

> The questions in the quantitative comparison section are designed to test your reasoning ability in making quick and accurate decisions as to the relative sizes of two given quantities, labeled A and B, and in perceiving when there is insufficient information given to make such a decision. The emphasis is on facility with computation shortcuts—approximating, converting common and decimal fractions, simplifying expressions containing radicals, exponents, or other algebraic operations, recognizing and dispensing with common factors and addends, and then weighing the relative contributions of those remaining portions of the two quantities. Without some facility in these areas, it is unlikely that you will be able to complete a satisfactory number of comparisons in the time allocated. The content includes arithmetic, data interpretation, elementary algebra, and very elementary or intuitive geometry.

Many candidates may legitimately question the face validity of this section. Lawyers and law professors should consider the relevance of such skills to the study and practice of law. Even if one decides that some familiarity with mathematical operations is helpful in some areas of the law, the further question of the level of proficiency must be addressed. Among the suggested approaches to the questions are the following two:

> 3. If the quantities being compared do involve variables, remember that the negative numbers become smaller as their absolute values become greater. Remember also the unique behavior of such numbers as 0 and 1.
>
> 4. If the quantities being compared involve powers or roots, remember that numbers between 0 and 1 behave differently when raised to a higher power than do numbers greater than 1. Take time to consider all kinds of numbers before you make a decision. As soon as you establish that quantity A is greater in one case while quantity B is greater in another case, choose answer (D) immediately and move on to the next comparison.

These cautionary statements indicate that those scoring highest on the section will be those familiar with computational idiosyncracies and comfortable with the speed at which these questions must be answered.

The Data Interpretation section appeared in the 1978-79 and 1980-81 *Bulletins*, but only the Quantitative Comparison section appears in all three *Bulletins* spanning 1978 to 1981. This preference for Quantitative Comparison is curious in light of previous research comparing the two sections. A 1974 study evaluating several operational and experimental item types compared the two sections:

> Because Quantitative Comparison items go very quickly, a 15-minute section of them contains as many items (25) as a 30-minute section of Date Interpretation. The Data Interpretation items have been considered to be more suitable for law school applicants, while the Quantitative Comparison items are more reliable and cheaper to write."[69]

Despite its apparent suitability for law school applicants, the Data Interpretation section was apparently dropped in favor of the Quantitative Comparison section which was cheaper, easier to write, and suited to a more speeded test. More disturbing was the frank recognition by these three authors that: "(a) recent study. . .has shown that Quantitative Comparison items are susceptible to coaching for high school students."[70] This statement seems contrary to the impression given in the *Bulletin* which states:

> **There is no evidence available to LSAC, LSAS, or ETS that taking LSAT preparation courses improves an examinee's score on average or gives an advantage that cannot be attained by conscientious study of the LSAT preparation material in the *Bulletin*. The Law School Admission Council and Educational Testing Service do not sponsor, support, sanction, or have any relationship with courses, schools, or other publications purporting to improve LSAT scores.**

While it may be in an individual's self-interest to take a preparation course to improve performance on the Quantitative Comparison section, it may be in the general interest to reevaluate the basis for including the section on the LSAT.

The Quantitative Comparison item type is also included in the Scholastic Aptitude Test, the Graduate Management

Admission Test, and the Graduate Record Examination.[71] The inclusion of this type of item on so many tests raises serious questions about the relationship between research results and practical test development activities. It also raises concerns that some who have benefitted from coaching or have simply done well on this type of item may be unfairly advantaged in their admission opportunities to a wide variety of graduate and professional schools. The single ability to perform well on Quantitative Comparison items may be translated into a multifaceted advantage in the quest for college and graduate education opportunities.

d. Principles and Cases

This section involves questions related to hypothetical legal principles and imaginary legal cases. There are four types of problems in this section, although each candidate will only encounter three types on a single form of the test. This variety of rules and rule changes indicates that considerable familiarity with the test format is essential to achieving a high score. Since this section is also one of the most speeded of the sections, with more than ten percent of the candidates failing to complete the test,[72] familiarity with the *Bulletin* and Sample LSAT and perhaps even exposure to a coaching course should improve one's chances of achieving a high score.

The section is included on the test because it has face validity.[73] This preference for face validity overcame statistical results which indicated that a slight increase in validity could be achieved by decreasing the emphasis on Principles and Cases in a revised LSAT.[74]

The face validity of this section is not unchallengeable, however. Although the section does try to simulate the logical processes which lawyers undertake, its format does not simulate the actual legal practice of attorneys. The section gives four alternative options, only one of which is the preferred response. Yet, as one law student aptly stated: "the basis of law is that there are at least two arguments for anything and that the conclusions aren't important but reasoning is."[75] At the most basic level, then, a test which considers only one response correct does not fit the rationale of a legal system which is grounded on an adversary model in which both sides are represented by competent counsel.

The preference for a single answer to questions involving subtle distinctions results in low reliability for the section. Reliability is a concept designed to indicate how accurately a score earned on one form of the test would reflect a score earned on another form. Yet the statistical analysis performed to yield estimates of reliability involves comparing the score on one-half of the items in a particular form with the score on the other one-half of the items. A low reliability estimate, then, is an indication that those scoring well on some questions scored poorly on others. A candidate's total score, therefore, depends on the luck of finding certain questions on a form of the LSAT rather than other questions. The reliability of the Principles and Cases section is the lowest among the subtests, yielding a reliability estimate of .66.[76] This low estimate may be an overestimate of the actual reliability, since the section is quite speeded and the formula employed to arrive at this estimate is only considered appropriate for an unspeeded test.[77]

The face validity of the section also involves a long-debated issue of whether candidates with specific knowledge of the law and legal terms ought to be given an advantage in a legal aptitude test. From its inception the LSAT was designed so that no specific legal knowledge was presupposed. One early review of the test noted, however:

> an applicant may find it easier to read many of the items if he has previously encountered such legal terms as "warranty," "title certificate," "statutory grant," etc., or is familiar with stilted legal phraseology.[78]

The current *Bulletin* reasserts the proposition that legal knowledge is not presupposed:

> With respect to reading comprehension, you must be able to understand, accurately and in detail, the situation presented by a set of facts and to recognize differences between several principles stated in language similar to that used by advocates and jurists. This language does not, however, presuppose a knowledge of law, and the meaning of technical terms will be explained in the principles presented.

Yet the Principles and Cases section contains a variety of legal terms which are not defined in the test materials. Such terms include "breach of contract," "restitution," "a crime involving moral turpitude," "insurable interest," "easement," "warranty," etc.

The variety of legal terms, some of which are defined makes it plausible that those familiar with the terms and principles they involve will do better on this section. Some indication of the effect of familiarity with legal reasoning on scores on this section may be found in an experiment reported in 1963 in which third year law students were readministered the LSAT. Principles and Cases was the only section showing appreciable score gains at both law schools included in the study.[79] One may infer from this result that those familiar with legal terms and legal reasoning before entering law school will do better on this section.

It has been argued that inclusion of specific legal knowledge is justifiable if it increases the predictive validity of the test.[80] The policy decision of the Law School Admission Council to prepare a test which does not presuppose specific legal knowledge appears to reject this argument. Yet predictive improvement may not actually occur because of the inclusion of legal knowledge, regardless of the stated purposes of the LSAC. One study found that the LSAT had virtually no predictive value for that subgroup of students characterized by an early decision to study law made during high school or college and by a tendency to have fathers who were lawyers.[81] This evidence is consistent with the hypothesis that inclusion of specific legal knowledge causes the scores of those familiar with legal practice to score higher on the section, but that the higher scores earned on this section do not necessarily indicate that students benefitting from prior exposure to the law will also perform well in law school. Since only 6 percent of minority law students have a lawyer in their immediate family,[82] minority applicants are likely to be disadvantaged in the Principles and Cases section.

e. Quality of the Bulletin

The careful reader preparing for the LSAT by conscientiously reading and analyzing the *Bulletin* and sample LSAT will form an opinion about the quality of the LSAT from the quality of the preparation materials. Unfortunately, unmistakeable errors appear in the *Bulletin* and may deflate a candidate's estimate of the test's quality. In addition, the candidate taking an actual LSAT encountering such errors will be confronted with the difficult choice of deciding whether an unintended error exists in the test or whether a subtle point is being tested. Since the errors appear in the *Bulletin*, which has been prepared for public dissemination and scrutiny, there is the possibility that errors also appear on actual forms of the test. Since the same errors appear in the 1978-79 and 1979-80 *Bulletins* the conclusion seems warranted that republication of the same materials does not involve reediting of those materials. Thus secret tests are only as good as they were when first reviewed.

- Imprecise Logic

Consider the following hypothetical legal principle, fact situation, and explanation offered in the *Bulletin*.

> ***PRINCIPLE***
>
> ***An employee is entitled to receive workmen's compensation benefits whenever he suffers a personal injury by accident arising out of and in the course of his employment. An accident is an unlooked-for mishap or an untoward event which is not expected or designed. An accident arises out of employment when it results from a risk to which the employee is subjected by his employment and to which he would not have been subjected had he not been so employed. An accident is in the course of employment when it takes place within the period of employment, at a place where the employee reasonably may be, and while the employee is carrying out his duties or something incidental thereto or while he is performing some other act which he has in good faith undertaken to advance the interests of his employer.***
>
> **3. Maureen is employed as a clerk at Calco, a factory that produces molded plastic dinnerware. She usually works in a small office at the front entrance to the plant. One day, because a mail delivery clerk did not report to work, Maureen's supervisor asked her to take a rush order over to D wing of the plant. As she was turning a corner in a corridor leading to D wing, she was greeted by a friend who asked what she was doing over there. In answering her friend, Maureen failed to notice a drop cloth and ladder placed in the corridor by painters who were painting the corridor walls. She tripped over the drop cloth, fell on the ladder, and broke her wrist. Maureen claimed workmen's compensation benefits from Calco. *Held*, for Maureen.**

Which of the following was the major factor in the disposition of this case *in light of the principle above?*

- **(A) Maureen usually does not deliver orders within the plant.**
- **(B) Maureen's supervisor asked her to deliver the order.**
- **(C) Maureen's attention was distracted by her friend's greeting.**
- **(D) The equipment over which Maureen tripped was normally used by the painters in carrying out their duties.**

(A) might seem to be a reason why Maureen should recover benefits, because she was doing something she was not used to doing, and mishaps might be more likely to occur in such a situation. But such a line of reasoning runs counter to the intent of the principle, which allows compensation only if the accident happened while the employee was working.

The careful reader will notice that "only if" in the last line of the excerpted explanation to this question is imprecise. The author apparently intended to indicate that the purpose of the principle is to compensate for all accidents arising out of the legitimate employment duties. Those with a flair for editing might be tempted to reword the last line to read: "whenever the accident happened while the employee was working in legitimate employment activities." The candidate recognizing this imprecise use of language may legitimately question the quality of items in other sections specifically designed to test for appropriate language usage.

- Omitted Words.

Consider the following Principle of law preceding a series of four cases.

PRINCIPLE

In the law of defamation, slander is an oral accusation made to a third person that falls into any of the following categories: (a) the commission of a crime involving moral turpitude; (b) the charge of having a loathsome disease: (c) the imputation of unchastity to a woman; and (d) a statement that affects a person in his trade, business, profession, or occupation. When a statement falls into one of these categories, the individual charged is entitled to recover damages even though he cannot point specifically to any financial loss. The truth of the statement will defeat the right to recovery.

The careful reader will notice a lack of parallelism in the four categories of slander. Category (a) should include a noun to parallel "charge," "imputation," and "statement" which begin the other categories and indicate things *said* by the slanderer. By contrast, "commission" indicates what the victim of the slander is supposed to have *done*. Yet as the Principle reads in the *Bulletin*, the word "commission" seems to be compared with these three nouns. Candidates will later be tested on their ability to recognize parallelism in another section of the LSAT. Those proficient at such identifications will be troubled by this error, since they have been cautioned that:

> **The principle may be either real or imaginary, but for the purposes of this test you are to assume it to be valid.**

The careful reader must then decide whether this is a typesetting and proofreading error which should be overlooked or whether this is an intentional alteration of the law of slander designed to identify a careful reader such as our puzzled candidate. The puzzle becomes more apparent, since the first case related to this Principle is stated as follows.

> **1. Grey was the president of a business corporation and White was its treasurer. Because of several inconsistencies that appeared in the accounts of the firm, Grey became concerned about White's honesty. Grey carefully watched White's activities for the next several months until he was convinced that White was tampering with the company funds. At this point he visited White in his office and, after revealing the basis of his suspicion, accused White of larceny. White had a sufficient explanation of the inconsistencies and had not, in fact, taken any money from the firm. In an action for slander by White against Grey, White will**
>
> **(A) win because he has been charged with the commission of a crime**
>
> **(B) win because he has been charged with an offense that affects him in his business**
>
> **(C) lose because he is unable to show that he sustained any financial loss by reason of the accusation**
>
> **(D) lose because the accusation was made to him personally and not to someone else**

Were option (A) the desired answer or even an attractive option, the reader would have to decide whether to ignore the error in the Principle or to reject the option because it does not accurately state the elements of the Principle even though it correctly states the traditional law of slander.

4. *Potential Bias in the Law School Admission Test*

A review of the content of questions is a first step in the identification of biased elements in a test. As indicated earlier, the questions are only one source of bias. The lack of face validity or the undue emphasis on speed may themselves be independent sources of lower scores for some candidates. So too, the expectation that a candidate will do poorly on a test may begin a process which results in lower scores.

Once the content of questions has been identified as potentially biased, two additional steps should ideally be taken to confirm this hypothesis. First, actual test response patterns from students should be collected and analyzed. Second, students should be debriefed after taking the test under actual testing conditions to identify the thought processes which led to certain responses.

Statistical analyses of test response patterns have been undertaken, but different statistical analyses of test response patterns yield widely divergent results. For example, one study found that those questions which were unusually difficult for all students were the ones with the greatest discrepancy between black and white response patterns on the Preliminary Scholastic Aptitude Test.[83] Another study of the Scholastic Aptitude Test, using a different methodology, found that the easiest questions were the most biased against black candidates.[84] One study of the LSAT found 20 items which deviated from the normal response pattern for one or another minority group. Some of these questions appeared easier for minority group candidates, including five questions referring to a reading passage concerning social customs among certain Indian tribes, while some of the questions appeared easier for white candidates.[85] An interview with minority candidates taking a sample LSAT revealed certain patterns in the responses of candidates choosing incorrect responses, but was not accompanied by a statistical analysis.[86]

These divergent findings from analyses of individual items may appear to be statistical quirks associated with different techniques for identifying biased items. A further inquiry, however, suggests that studies identifying the "easiest" items as biased or the "hardest" items as biased can each be elements in a predictable pattern of bias caused by the test specifications for the LSAT or similar standardized tests.

Literature about the LSAT has indicated that the wrong answers are inserted because they attract certain candidates. "Each option must seem reasonable to the candidate who lacks sensitivity and yet the distractors must not be so good that competent judges will fail to agree on the correct answer."[87] Those who are distracted by wrong options, however, must not be those who are doing well on the rest of the test. An efficient test question must disclose:

> whether or not it will consistently produce scores which rank candidates in the order of their ability on the function being measured. The most efficient test is one in which each question is separating good candidates from poor candidates to a marked degree.[88]

In a population composed of two or more diverse cultures, the process of constructing a test which consistently differentiates candidates can introduce bias. Assume that there are two culturally distinct groups, the first comprising ninety percent of the candidates, and the second, ten percent. This assumption is conservative, since the LSAT was originally normed in 1948 when the entire legal profession was composed of only 2.5 percent female and 1 percent black lawyers.[89] The danger that distinct cultural groups were adversely affected during the original norming process is consequently quite real.

Consider the impact of consistency specifications on two hypothetical items in a pretest. The first contains irrelevant difficulties for the majority group because the correct response to the item assumes familiarity with the culture of the minority group. Thus, candidates from the majority group will correctly answer the item if they are familiar with the minority culture but not necessarily if they possess the ability the test item was designed to identify. The second item contains material familiar to the majority culture and therefore irrelevant bias for the minority group. Similar inconsistent scoring patterns will result for members of the minority group.

The pretest process will eliminate those items found to have produced inconsistent scoring patterns. However, in this example only the first item is likely to be eliminated. The inconsistent response patterns among ninety percent of the candidates will be unacceptable. Yet the inconsistent response patterns among ten percent of the candidates on the second item may go undetected in the pretest and the question could remain on the final test. Thus, although both questions contained irrelevant material that made the question inappropriate for one of the groups taking the test, only one of the questions is likely to be eliminated from the test. This means that there is a subtle, systematic bias in tests which are constructed according to consistency specifications.

This process of creating bias through item specifications would be expected to produce items at each extreme of the "difficulty" spectrum with the most bias against minority group candidates. At the one extreme, questions which are considered "easy" by majority group candidates may merely confuse students who will eventually do poorly on the rest of the test. (See section b, following, for a possible example of this type of biased question.) At the other extreme, questions which most candidates find "hard" will be those which only a few candidates who have scored well on the rest of the test will answer correctly. (See section d, following, for a possible example of this type of biased question.) In both situations, those favored by the item selection process will be members of the majority group; those disfavored will be members of the minority group. This suggests that a test with equal difficulties among questions will be less likely to introduce irrelevant bias into the test. This has been demonstrated in a computer simulation model comparing the bias of a test with equal difficulties across items to a test with graduated difficulties.[90] Of course, a test with equal item difficulties would have to be inordinately long to produce score differences among candidates that were large enough to produce any predictive validity. Thus, in the name of efficiency, a test specification likely to introduce bias has been adopted.

There has been no research concerning the practical effects of item specifications on LSAT scores of minority candidates. The only reported research on this issue involved questions which were already included in the 1970 version of the California Achievement Tests. Seven subgroups of students selected to represent various racial, geographic, and socioeconomic groups were compared. When each group was considered a separate pretest population and only that half of the total test which was considered "best" for each group was compared, a pattern of results emerged which indicated that an average of 30 percent of the "best" questions for one subgroup did not appear in the list of "best" questions for another group. The author concluded that: "standard item selection procedures produce tests best suited to groups like the majority of the tryout sample and are therefore biased against other groups to some degree."[91] Since this study involved an achievement test rather than an "aptitude" test, and since all the items were already included in a version of the actual test, the implications for potentially biased items in the LSAT seem significant.

The significance of item specifications during the item tryout phase of test development can be appreciated by reviewing data for the Scholastic Aptitude Test (SAT), which is built according to specifications similar to those for the LSAT.[92] The pretest items evaluated in 1965-66 were arrayed according to their difficulty levels. However, items were considered unacceptable if they did not also display sufficiently high point-biserial correlations with the total test score (at least .30). Interestingly, once items were difficult enough so that only 30 percent of the pretest group answered them correctly, less than half of these items also met the specifications for consistency, as measured by the point-biseral correlations. For items answered correctly by only 20 percent or less, fewer than one-third of these "difficult" items were also "appropriate" for inclusion in an actual SAT.[93] In other words, between half and two-thirds of the questions which appeared difficult during the pretest were nonetheless discarded because they did not agree sufficiently with the total test results. It would be of interest to learn the results on these items among members of racial minorities. The theory outlined above suggests that the most biased questions are likely to appear at the extremes of the difficulty scale. These results indicate that more "inappropriate" items are also found at the extremes. These "inappropriate" items may also be less biased against racial minorities. Of course, for items exhibiting ***negative*** correlations with the total score, it is axiomatic that lower scoring candidates would improve their scores as a group if these items remained on the final test; yet solicitude for consistent results, and indirectly for high-scoring candidates, requires that these items be excluded. Larger total score differences among racial groups seem to be the likely consequence.

It is important to note that this approach to biased items is quite different from approaches commonly encountered in the literature. Previous definitions of biased items treat them as aberrations or accidents. One formulation argues that "bias is discovered when an item does not fit the pattern established by others."[94] Yet this definition would be expected to identify different proportions of "biased" items in various forms of the same test, such as the LSAT, or among various tests. Yet it is the very consistency of score differentials among ethnic and racial groups which causes concern and prompts this inquiry. Certainly the definition of bias should be sufficient to include the possibility that biased items are systematically included in similarly constructed tests. The aforementioned analysis is intended to indicate how test specifications can introduce bias into tests in a systematic fashion, by confounding indications of the "difficulty" of items with articulable rationales for poorer performance on the items of extremely high or low difficulty by members of cultural minorities. Surely an obviously "biased" item cannot be excused merely because it is a particularly "difficult" item if that difficulty is itself culture-bound.

a. Insensitivity to Minority Group Traditions

Perhaps the most startling and revealing passage encountered during the review of the *Bulletin* appeared very early in the booklet.

> ***Questions 3-4* refer to the following passage.**
>
> **A servant who was roasting a stork for his master was prevailed upon by his sweetheart to cut off one of its legs for her to eat. When the bird was brought to the table, the master asked what had become of the other leg. The man answered that storks never had more than one leg. The master, very angry but determined to render his servant speechless before he punished him, took the servant the next day to the fields where they saw storks, each**

standing on one leg. The servant turned triumphantly to the master; but the master shouted, and the birds put down their other legs and flew away. "Ah, sir," said the servant, "you did not shout to the stork at dinner yesterday; if you had, he too would have shown his other leg."

Although the question refers to a servant rather than to a slave, black candidates may take offense at this condescending portrayal of the actions and speech of a stereotypical servant. The explanation to the question begins with a reference to "the humor of the fable," but black candidates may not see the humor. Instead, the mere reading of this passage, whether in the *Bulletin* or an actual form of the LSAT, may lower the candidate's motivation to do well on the test, or may break the concentration of black candidates so that valuable time will be lost or so that the normal processes of logical reasoning will not be adequately tested by subsequent questions which themselves contain no elements of bias.

The presence of this passage in so prominent a place in the *Bulletin* raises serious questions about the sensitivity of those who prepare the LSAT to the experiences and traditions of minority groups. To ignore the fact that black candidates view the history of slavery in America differently than do most white candidates is to ignore a central element in the cultural background of black candidates. The appearance of this question raises serious questions about the adequacy of procedures relied upon in the development of the LSAT to eliminate cultural bias.

It is important to note that the biasing factor associated with this passage is not related to the educational achievement of the black candidate. Blacks with excellent college records and relatively advantaged economic backgrounds will nonetheless take offense at the passage. Of course, not all black candidates will react similarly to the passage, but those whose scores are lowered by its presence will be harmed by the cultural insensitivity of the LSAT, rather than by disadvantages which individual blacks may or may not have suffered.

In the course of the months between the first identification of this passage and the publication of this report, several revealing reactions to the passage by sympathetic white readers deserve mention. Some readers argue that associating this episode with the Old South is inaccurate. One reader claimed that the scenario occurred in Medieval Europe—the reader had a German surname. Another claimed that it occurred in Old England—the reader had an English surname. In fact, storks are wading birds found in Europe, but the variety of locations associated with the episode is closely associated with the reader's own cultural background. Whites are prone to envision a feudal scene, blacks and other minority readers tend to imagine a black-white slave-master situation. Thus, the passage is revealing because it reveals the probable racial identity of the reader when the reader is asked to locate the setting of the episode.

Other readers have argued that the dialogue is not a condescending portrayal of the actions and speech of a stereotypical servant—after all, the servant outwits the master. Yet this criticism also misses the point of the insult blacks associate with the passage. No one seriously believes that the servant is intending to outwit the master with the truth. Instead, the folklore tradition of "house niggers" always portrays the servant as more clever than the master. Yet the social position of the servant is never in doubt. The folklore promotes a stereotype in which servants are not to be trusted—even when their wits are keen—since they are portrayed as deceitful to the point where obvious facts such as the difference between live and dead storks will not dissuade a servant bent on deceiving a master.

b. Different Interpretations of Intentionally Ambiguous Wording

Question 3 in the sample Logical Reasoning section refers to the previous passage.

3. The servant's final retort to his master would be true if which two of the following statements were simultaneously true?

I. Roasted storks at the dinner table behave just as live storks in the field do.

II. The missing leg on yesterday's roasted stork had actually been tucked under the bird.

III. The master had not undertaken to teach the servant a lesson.
IV. The servant's sweetheart, rather than the servant himself, had cut off the stork's leg.

(A) I and II (B) I and III (C) II and III
(D) II and IV (E) III and IV

The desired response is (A). Readers selecting this answer may consider the question to be an easy one. Yet the explanation indicates that this question is of about average difficulty. This means that approximately 65 percent of the candidates answered the question correctly.[95] A sensitive reading of the question reveals a possible interpretation which, if chosen, would produce an incorrect response because of cultural background. The explanation offered for the correct answer argues that: "The servant's retort is a logical conclusion if certain assumptions are made." Yet this is not precisely what the question asks. It asks under what circumstances the servant's final retort "would be true"—not what circumstances would make the retort "logical." Candidates who recognize the servant's final retort to be false, rather than true, and who were cognizant of the inflammatory political situation involved in a servant mocking his master might be quickly drawn to option III. Under this reasoning, if the master had not undertaken to teach the servant a lesson, the servant would not have relied upon a clever retort to refute the master's attempted proof. Since this question is one of those which scores true-false items in groups, the candidates would then be forced to choose another option to accompany the first choice. Options I and II are unlikely choices, since both options depend on changing the objective state of physics in the world, whereas the candidate is only searching for an option which changes the political situation within which the final retort is made. Option IV would be the only plausible option for such a candidate, although the choice would be made reluctantly. The candidate may reason that, while a typical servant would not turn in this sweetheart, the white question-writer may assume that he would and therefore IV is the desired answer. The explanation does not explore this potential ambiguity. Instead, it rejects III because "(III) does not bear on the truth of the servant's retort." Yet this is not precisely what the question asks. It asks what conditions must exist under which the retort "would be" true.

The thoughtful reader may ponder the difference between the options in the question and the explanations of the *Bulletin*. The options were consciously chosen to be attractive to some candidates. Those selecting the correct answer may find little attraction with the two undesired responses. Yet they were inserted into the question. Could it be that the question-writer saw the ambiguity and selected the options to play upon that ambiguity? In contrast, the explanation does not recognize the ambiguity and gives little credit to those selecting the undesired options. The explanation avoids the potential ambiguity by slightly revising the import of the question to make the options seem silly. Yet other questions force the reader to stick to the wording of the question precisely. Candidates which reword the import of those questions as much as this explanation does will likely be penalized for their imprecision.

c. Ignorance of Minority Community Values

Several questions have apparently been inserted into the LSAT to reflect the experiences of minority group members. Yet one such question may have introduced bias by not reflecting a minority perpsective in selecting the best answer.

> **For a number of years, Samuel Williams, the black manager of a retail shoe store in a large midwestern city, had been interested in opening his own business. In the summer of 1960, he began to seek support from the citizens of the community for a store that would retail high-quality, medium-priced men's, women's, and children's shoes. The store was to be located in a business district occupied predominantly by black-owned and black-operated establishments and would be within walking distance of three local colleges with a total student population of over 8,000. More than 15,000 black families lived in the city, each of which could be expected to spend from $100 to $1,000 each year on shoes, handbags, belts, and other apparel. Williams estimated that the buying power of the consumers living in the immediate vicinity of the store was about $25,000,000 annually.**
>
> **In exploring the possibility of raising the necessary investment capital to establish the firm, Williams had contacted a large number of potential stockholders during the**

summer months, hoping that 100 to 200 members of the black community would invest in the store. He predicted that these stockholders would bring their business to the store and would encourage their friends to do the same

Businessmen, including local insurance executives, bankers, real estate salesmen, contractors, and grocers, as well as housewives and professional persons, attended several meetings to discuss the venture, and a small group of persons agreed to finance the application for a charter and to underwrite the initial costs accompanying incorporation. This group would later receive stock for its contribution to the initial underwriting. Meanwhile, a larger group of potential stockholders was being assembled.

Williams had carefully planned his campaign to raise the necessary investment capital to open the business, and he had made a good start toward raising the $35,000 needed. But by September 12, less than a month before the planned opening of the store, only $16,000—46% of the needed capital—had been acquired and placed in a special bank account. Williams was concerned that, without the entire sum of investment capital, there would not be sufficient funds for advertising, financing of accounts payable, fixed costs and overhead, and completion of remodeling. At best, the cost of the firm's operation could be projected for only a short period. He realized that some revision of his plans for accruing investment capital might be necessary if the business was to begin on a sound financial basis. He therefore met with the store's financial advisers to discuss present finances and to determine whether the intended opening date for the store—October 1—could be met. He presented the advisers with the following information concerning costs and expected profits.

Williams had chosen as the site for the store a one-story building with an adjoining parking lot. He had the option of leasing the property for five years at $150 a month or purchasing it over a period of five years at $210 a month. The latter alternative seemed preferable, since it would reinforce the idea that the store was a community-owned, permanently established business.

Renovation of the store had already been begun, but no bills had as yet been paid. Costs for refurbishing of the property itself included the following:

Repairs	$4,200
New fixtures	4,700
Air conditioning	2,395
Carpeting	500
New front windows	600
Miscellaneous expenses	300
	$12,695

In addition, it was estimated that total operating expenses of the store, excluding the cost of goods to be sold, would be approximately $27,000 a year.

In order to break even during the first year, the store would have to reach a volume of $140,000 a year. It was estimated that if only 100-200 of the families in the area made all their shoe and leather purchases at the store, this figure would be reached. If one-tenth of the potential customers made all their purchases at the store, volume might rise to $500,000. In addition, Williams' accountant had assured him that net profit would run from 5 to 10 per cent when volume reached $200,000.

The opening day for the store had been set for October 1 because on that day students returned to the three local colleges. Williams was certain that the new store would derive a substantial part of its initial business from students and faculty returning from vacations.

The financial advisers predicted that it would take approximately three more months to raise the balance of necessary capital by recruiting more local stockholders. They suggested that Williams try to attract potential investors from outside the neighborhood. They believed that sufficient capital could easily be brought into the corporation in this way to open the store by October 10. Knowing that Williams was anxious to find stockholders within the community near the store, a second alternative was suggested: one-half of the funds raised to date could be withdrawn from the bank and invested in stocks predicted to produce the balance of the capital needed within thirty days. The last possibility suggested was that of opening the store on the intended date whether or not the desired amount of capital had been raised. The store would thus gain the advantage of the patronage of the returning college students and would gradually accumulate the balance of capital through sales and contributions from new stockholders.

Williams was reluctant to begin operation of the store without sufficient capital to cover unforeseen problems in operation. However, he was even more convinced that the store would be successful only if it were controlled by community members. He therefore chose the last alternative.

DATA EVALUATION QUESTIONS

Directions: The following questions consist of items related to the passage above. Consider each item separately in terms of the passage and on the answer sheet blacken space

A if the item is a *Major Objective* in making the decision; that is, one of the outcomes or results sought by the decision maker;

B if the item is a *Major Factor* in making the decision; that is, a consideration, explicitly mentioned in the passage, that is basic in determining the decision;

C if the item is a *Minor Factor* in making the decision; that is, a secondary consideration that affects the criteria tangentially, relating to a *Major Factor* rather than to an Objective;
D if the item is a *Major Assumption* in making the decision; that is, a supposition or projection made by the decision maker before weighing the variables;
E if the item is an *Unimportant Issue* in making the decision; that is, a factor that is insignificant or not immediately relevant to the situation.

5. Value of establishing the store's reputation as a community enterprise

The correct designation is (D) Major Assumption. The explanation given makes it clear that a careful reading of the statement is necessary, "since it is the value of the reputation that is at issue and not the reputation itself." To those accustomed to thinking in terms of a corporate framework of value, this explanation may be persuasive.

Yet there may be a value *to the community* of establishing the store's reputation as a community enterprise. This might be true if only for the symbolic value of demonstrating that a black-owned shoe store is possible. This might be particularly poignant for a black man who has been a "manager of a retail shoe store" but not yet an owner. The value may also strengthen the entire community's reputation as an area in which black-owned businesses exist. If one read the question with this perspective, identifying the statement as a Major Objective would seem plausible. In contrast, the explanation would only recognize the statement "Establishing the store's reputation as a community enterprise" as a Major Objective. Yet even this similar statement would contain potential bias. Those familiar with a community in which black-owned businesses existed may recognize that local residents are reluctant to patronize a store which is owned by absentee owners even if a "black manager" is prominent on the premises. For those candidates, the designation as a Major Factor would seem plausible.

In either the actual question or the similar hypothetical question mentioned in the explanation offered by ETS, the potential of bias against black candidates familiar with black-owned businesses exists. There is considerable irony if such a biased pattern of responses were revealed in a statistical analysis or interview session with minority candidates. In this case, the question would have been written with the express purpose of providing reading material relevant to the experience of black candidates. Yet the potential for bias arises precisely because of that relevance. Black candidates may have been penalized because of their familiarity with the situation of establishing a community-owned enterprise and their perspective which differs from that of the majority of candidates who continue to view the value of establishing a store's reputation as a community enterprise as an assumption—in part because that assumption has not been tried during the actual experience of the majority of candidates.

d. Assumptions Contrary to Those of Minority Group Members

Consider the following question designed to test a candidate's Logical Reasoning.

> **12. Do you think that our university ought to go on discriminating against disadvantaged students by continuing its current admissions policies?**
>
> **In terms of its logical features, the question above most closely resembles which of the following?**
>
> **(A) Do you think that whatever people do is right?**
> **(B) Should your neighbor stop beating his wife?**
> **(C) Do you think children should be taught to believe in the devil?**
> **(D) Should force be used to prevent a person from committing suicide?**
> **(E) Does power corrupt people and absolute power corrupt them absolutely?**

The correct response is (B). However, for students who immediately assume that the university *is* now discriminating, the question may be imponderable.[96] Students immediately assuming that the university is not discriminating will recognize that the question contains the logical elements of the correct response. Most minority students share the assumption that current admission policies do discriminate against disadvantaged students. Thus, the political assumptions implicit in selecting the desired response become elements of cultural bias in the test.

All students may be required to occasionally engage in either/or types of logical problems, but the only students which must engage in such logical alternatives are the ones immediately assuming that there is discrimination occurring. Other students will at least gain an advantage of time in being able to quickly find the desired answer.

Some minority students who are wary of traps laid for them by white test-makers may reason that "current admissions policies" often include Special Admission programs for minority students and disadvantaged students. Those including this common knowledge in their analysis of the question may reason that one force—the Special Admissions program—is being employed to avoid the harms which would result from unbridled allegiance to the force of traditional admissions policies. Choice (D) would be attractive but that choice would be incorrect.

The presence of this question in the wake of repeated litigation over the legality of university admission policies presents even greater problems. Those more likely to select the desired response will be those more likely to agree with current admission policies. Yet if selecting the desired response to this question becomes an element of a candidate's "qualifications" to study law, to label those who assume the university is now discriminating as lacking "logic" is to substitute a political test for a test of legal aptitude. To label minority students as "less qualified" because they assume the university is now discriminating is to embellish patent racism with a veneer of objectivity which will not withstand careful scrutiny.

The confusion between a test of political orientation and a test of logical reasoning may be appreciated by considering a possible alteration of the actual question. Suppose that the question began: "Do you think that our universty ought to go on discriminating against white students by continuing its current admissions policies?" It is plausible that many minority students who found the actual question imponderable would instead notice the implicit assumption that the university may or may not be discriminating against white students. Many will be able to assume that there is no discrimination against white students and select the desired response. Yet this altered query is precisely what the courts have been asked in every "reverse discrimination" lawsuit. Nonetheless, lawyers for the white plaintiffs, lawyers for the universities, and the judiciary all approached these cases without seriously questioning whether the university was actually discriminating against white students. This assumption was taken for granted. No one, however, suggested that these lawyers and judges lacked "logical reasoning" ability because they shared common assumptions about the effects of admissions policies.

The careful reader will also notice the possibility of sex bias in this question. Many women who are aware of the undocumented prevalence of battered wives will be hard-pressed to see the humor in the tired joke offered as the desired response. Many women will find it difficult to assume that the neighbor is not now beating his wife, just as many students will find it difficult to assume that the university is not now discriminating. Again, a test which purports to select those candidates with the greatest capacity for logical reasoning will instead be selecting those students with the greatest capacity for assuming that all is well on a legal aptitude test.

e. Reinforcement of Prejudicial Stereotypes About Minority Group Members

Perhaps the most sensitive question encountered in the *Bulletin* is the following item. This item highlights the fact that legal issues involve conflicts among real people, each of whom has a story to tell. Requiring a single answer to questions involving such conflicts is erroneous.

> **PRINCIPLE 2**
>
> ***An assault is a threat made intentionally in words or gesture by one person against another to inflict bodily injury by force. It must appear to the intended victim that the aggressor has both the intent and the apparent ability to harm him, so that the person so threatened is put in reasonable fear of immediate bodily harm.***
>
> 16. **As Sally walked home one evening, she noticed that she was being followed by a man she did not know. When she started to run, he ran too, without saying anything. She stumbled, fell and broke her leg. When it was apparent that she was hurt, her pursuer silently turned and ran away. He was caught and was identified as Jonas. In a suit by Sally against Jonas for assault, she will**

(A) win because she fell and broke her leg
(B) win because Jonas ran after her
(C) lose because Jonas turned and ran away
(D) lose because Jonas did not say anything to her

This is an intentionally ambiguous situation. Nothing is said; no one is touched. Those choosing the correct response (B) are likely to relate the situation to their own experiences or expectations. The plight of the frightened woman is evident. The statement of the facts is typical of the fact situations throughout the section. The facts are presented in the way in which Sally's attorney, or a judge ruling in Sally's favor, would present them. Thus, those sensitive to the innuendo of the passage can trust to their instincts in selecting the correct response.

Minority males, however, are likely to relate the situation to their own experiences or expectations as well. Many minority males have been mistaken for muggers merely because of their appearance. These candidates may identify with the plight of Jonas, whose ambiguous actions are the ones to be reasonably evaluated. Minority females are in a double-bind, since they will both recognize the physical danger Sally may sense and also recognize the stereotypes associated with all minority males as potentially violent attackers. Candidates recognizing the ambiguous predicament of Jonas may reason that no intention to threaten Sally is obvious.

Other innocent reasons for his actions may occur to these candidates. Perhaps Jonas was merely running to catch a bus until the incident occurred. Perhaps Jonas was merely running to reassure an obviously terrified woman that there was no danger. Perhaps Jonas was tired of women running away from him merely because of his appearance and was running to confront Sally with her prejudice against him. Whatever the imagined intentions of Jonas, candidates may conclude that Sally's fear of immediate bodily harm was not reasonable.

These candidates' conclusion would be even more defensible if they reached it in the context of a criminal charge of assault where guilt beyond a reasonable doubt is required for Jonas to lose. The passage mentions a suit by Sally against Jonas, but does not make it clear whether Sally is the plaintiff in a civil action or the complainant in a criminal action. Since assault is a common crime but a rare tort, those absolving Jonas of guilt because he committed no crime cannot be labeled as having less legal aptitude.

Candidates troubled by the ambiguous intentions of Jonas are given ample encouragement, since options (C) and (D) both address the issue of Jonas' intentions. To these candidates, the question is a difficult one, since selecting between these two options requires a close choice. Whichever choice is made will seem consistent with the desired answer to the case appearing two questions later under the same Principle.

> **18. Alston and Bellotti, co-workers, were on bad terms with each other. Alston had often threatened that he would drop a piece of pipe on Bellotti some day. One afternoon at the end of their shift, Bellotti was walking across a lane of traffic in the company parking lot at a marked crosswalk when Alston's car narrowly missed him. Alston had unreasonably and carelessly accelerated his car so that he could not stop at the crosswalk and had failed to watch for pedestrians at the crossing. Bellotti was badly frightened by the incident. In a suit by Bellotti against Alston for assault, Bellotti will**
>
> **(A) win because Alston had threatened him verbally**
> **(B) win because the car's approach put him in fear of bodily harm**
> **(C) lose because Alston's car was not on the public way**
> **(D) lose because Alston had not intended to frighten Bellotti**

In this situation the general intention to harm Bellotti is clear. What is at issue is the specific intention of Alston to inflict immediate bodily injury. Since the facts are presented from Alston's viewpoint, the desired response (D) can be readily selected. Candidates choosing either (C) or (D) to Sally's situation will consider their choice to have been vindicated by this question. Thus, the trap for those identifying with Jonas is a subtle one. Candidates will be penalized more for their sympathies than for their logic.

The appropriateness of such a question for selecting lawyers to represent defendants, as well as victims, in criminal matters is open to serious question. Those selecting the correct response are likely to have internalized a prejudicial stereotype of the strange male's intentions. Those selecting the incorrect options may have been penalized for deciding the case in the more usual context of criminal law or for sympathizing with the male whom they may view as the ultimate victim of the scenario.

The issue of criminal law in the inner city is a controversial one for many minority law students. As one black law professor has candidly stated:

> As law students they may ingest and internalize for later regurgitation the operative elements of "probable cause," "reasonable suspicion," and "due process." As blacks, their personal experiences belie the efficacy of these same concepts.[97]

Candidates aware of the gap between theory and reality in the enforcement of criminal statutes may even be excused for choosing option (A) in Sally's case. These candidates may cynically conclude that Jonas would never even have been tracked down, arrested and charged if Sally had not broken her leg. They might consider Jonas to be the scapegoat for Sally's misstep.

The very real conflict which this scenario evokes is the grist for a sensitive law school class. Yet a student body selected because they all sympathize with Sally will be insitutionally incapable of providing all of the perspectives necessary to achieve the academic debate essential to such a sensitive topic. It is precisely such discussions which require a diverse student body representing varying viewpoints. The requirement that the student body all have scored well on the LSAT may seriously impair the likelihood of achieving this diversity.

Minority male candidates with test-wiseness may avoid the pitfall which this question contains. These candidates will recognize that both reasons given for Sally losing involve the same aspect of the Principle—the intent of Jonas. Since selecting between these two options depends on inferences, the candidates can decide that Sally must win.[98] Then the choice must be made between the reasons for her victory. Option (A) does not involve an element of the Principle. Option (B) involves a "gesture" and therefore evokes an aspect of the Principle. Yet preferring candidates who have test-wiseness is not the stated purpose of the LSAT. Neither should it be the vehicle for avoiding an otherwise biased result in this question.

f. Tests of Specific Legal Knowledge

The directions to the Principles and Cases sections assures candidates:

> ***These questions do not presuppose any specific legal knowledge on your part. You are to arrive at your answers entirely by the ordinary processes of logical reasoning and common sense.***

This statement can be justified because the elements of legal principles are contained in the text of the test. Careful candidates can be expected to read, understand and apply these principles to the fact situations preceding the questions. Yet this does not mean that candidates with specific legal knowledge have no advantage. In a highly speeded test, such as the Principles and Cases section, the ability to apply legal knowledge without spending the time of analyzing each Principle as a novel concept can give some candidates an unjustified advantage.

Consider the following Principle and Case:

PRINCIPLE

> ***In the law of defamation, slander is an oral accusation made to a third person that falls into any of the following categories: (a) the commission of a crime involving moral turpitude; (b) the charge of having a loathsome disease: (c) the imputation of unchastity to a woman; and (d) a statement that affects a person in his trade, business, profession, or occupation. When a statement falls into one of these categories, the individual charged is entitled to recover damages even though he cannot point specifically to any financial loss. The truth of the statement will defeat the right to recovery.***

3. Stone, who seriously disliked his neighbor, Weber, wrote a letter to the president of the company that employed Weber advising that Weber was addicted to drugs and that he, Stone, felt the company should be informed of this since it undoubtedly would impede Weber's ability to work properly. The accusation was untrue. Nevertheless, a short time after receipt of the letter, Weber was informed by the company president that his services were no longer required. Weber, upon investigation, learned of the charge made by Stone. In a suit against Stone charging slander, Weber will

(A) win because the charge affected him in his business
(B) win because the charge against him was made to a third person
(C) lose because he should be able to clear himself of the accusation
(D) lose because the charge was made in writing

The desired response (D) is reflected in the Principle which requires an "oral" accusation. Careful candidates can refer to the Principle and recognize the answer. Yet candidates familiar with the law of defamation will recognize the appropriateness of (D) without taking the time to review the

Principle. Not only will this be an easy question, but also the time pressure on other questions will be reduced.

Candidates with test-wiseness may also be advantaged on this question. Options (A) and (B) both accurately relate elements of the Principle to aspects of the Case. Thus, the choice between the two is a difficult, if not impossible, one to make. As with the previous question, candidates may safely reason that, since both reasons for Stone winning appear equally valid, Stone probably loses. Then the choice is between the two reasons offered for this losing. Option (C) is unattractive since the Principle states that truth will defeat the right to recovery yet the Case states that the accusation was false. Whether or not the accused can eventually prove the falsity is irrelevant. The accuser must prove the truth.

Insofar as minority candidates are less familiar with actual legal principles, or are less familiar with test-taking strategies, a question such as this which advantages candidates knowledgeable of the law or proficient at test-taking can be considered biased against minority candidates. The fact that some minority candidates will have specific knowledge of the law of slander or will have taken a coaching course does not change the tendency of the question to disadvantage minority candidates as a group.

g. Preference for Big City Candidates

Those disadvantaged by the LSAT need not be only minority group members. Candidates from rural areas may also be disadvantaged on certain questions such as the one discussed below.[99] Insofar as minority group candidates come from rural backgrounds, as the descendants of former slaves universally have, a bias against rural candidates will contribute to the lower scores of minority candidates. Some minority candidates with a big city background and orientation may be advantaged by certain questions, but the deflated scores of other minority candidates from rural backgrounds will nonetheless be underestimates of their true ability.

These observations suggest that a variety of factors will influence the scores of all candidates. Although this report discusses only those factors likely to affect the scores of minority candidates, the existence of factors primarily influencing the scores of other candidate groups is acknowledged insofar as those factors also influence the performance of some minority group candidates. The implications for the evaluation of scores by other candidates are not fully explored. The orientation of this report does not require such fine-tuning of scores, since the importance of UGPA in evaluating candidates is emphasized. Thus, the recognition that calibrating LSAT scores for a variety of groups is quite difficult is met by a return to UGPA as the primary factor for evaluating academic ability and achievement. Those continuing to place primary emphasis on LSAT scores will have to grapple with the many potential biases touched upon in this report.

Consider the following Principle and Case:

PRINCIPLE 1

A person who owns personal property and voluntarily transfers the possession, but not the ownership, of that property to another who accepts charge of it, is called a bailor, and the person to whom it is transferred is called the bailee. If the bailee at a future time delivers the property to the wrong person, the bailee must pay to the bailor the full value of the property. While in possession of the property, the bailee must exercise reasonable care of it in the same manner that an ordinary, reasonable, and prudent person would use in taking care of his or her own property. If the bailee does not do so, the bailee will be liable for the damage to the bailor's property, or if the bailor's property is destroyed or lost because of the failure to exercise reasonable care, the bailee will be liable for its full value.

14. Delroy operated a bicycle shop in which he sold new bicycles and repaired used ones. Delroy was in the habit of going out to lunch without leaving anyone in charge and without locking the doors to the bicycle shop. Jan brought her bicycle to the shop for repair early one morning. Later that day, while Delroy was out to lunch, several new bicycles were stolen and Jan's was damaged. Delroy returned the damaged bicycle to Jan. In a suit by Jan against Delroy for the damage to the bicycle, Jan will

(A) win because Delroy did not take reasonable care of Jan's bicycle
(B) win because Delroy must deliver the bicycle in good condition to Jan
(C) lose because Delroy took the same care of Jan's bicycle as he did of his own bicycles
(D) lose because the thieves were responsible for damaging the bicycle

Candidates choosing the desired option (A) may quickly envision an inherently mobile possession—a bicycle—in an anonymous city. Thieves could easily steal the bicycle and never be caught once leaving the scene of the crime. For a bicycle shop owner to run such an obvious risk seems unreasonable.

Candidates from rural areas or small towns may envision quite a different scene, however. They may imagine a town similar to their own in which everyone knows everyone else and doors are left unlocked without inviting danger. They may assume that since Delroy made a habit of leaving his bicycles unlocked and unattended that he lived in such a community. The danger of theft is further reduced if neighbors know one another's property and local youths could not ride a new bicycle around town after a theft of the local bicycle store without coming up with a good explanation and perhaps a sales receipt. These candidates may plausibly choose option (C).

Candidates who depend on a thoughtful consideration of the fact situation without letting their imaginations control their judgment may seriously question the answer key. They may reason that since Delroy made a habit of leaving the bicycles unlocked and unattended that he has not had a previous theft during lunch. If he had previous thefts that were not mentioned in the facts, either he would be quickly out of business because his new bicycles were continually being stolen and no one would leave their bicycles for repair, or he would have changed his habits and secured the bicycles. Since it is not reasonable to assume that a businessman would continue habits which resulted in theft losses, it may be reasonable to assume that his habits indicated that no previous thefts had occurred. If this is true, then option (C) would appear to be a sufficient response to Jan in accordance with the Principle.

Those defending the answer key may respond that treating loaned property similarly to owned property is not necessarily reasonable if the owner acts unreasonably toward possessions. This is true, but it does not address the specific fact situation presented. Instead, adherence to the desired option (A) seems to establish a rule of law that those who leave their doors unlocked and property unattended are leave their doors unlocked and property unattended are automatically acting unreasonably. Such a rule will be unpalatable to those unhappy with living in prison-like conditions in fear-ridden cities. Such a rule would outlaw that portion of America which continues to enjoy the security which unlocked doors without fear represents. Establishing such a rule on the basis of these facts seems unreasonable, since the inference that Delroy acted unreasonably may itself be an unreasonable inference.

h. An Insistence on Harsh Results

Law students who prefer the word "justice" to "mercy" are more likely to stay in law school rather than to drop out for nonacademic reasons.[100] Candidates who recoil from harsh results in legal situations may fare worse on the following Case based on the preceding Principle of the law of bailment.

11. Louise took her watch to Alex, a jeweler, to have it repaired. Alex gave Louise a ticket with a number on it and put the same number on the watch. One week later, Louise had a disagreement with her twin sister Robin, who looked almost identical to Louise. Robin stole the ticket for the watch from Louise's purse and went to the jeweler, Alex, who gave the watch to her. Robin gave the watch away, and it cannot be located. In a suit by Louise against Alex to recover the value of the watch, Louise will

(A) win because Alex did not take reasonable care of the watch
(B) win because the watch was delivered to the wrong person
(C) lose because Robin had no right to take the watch
(D) lose because Alex made a reasonable mistake

This case presents one of the harshest results imaginable under the law of bailment. Those who decide the question on the equity of the fact situation will be attracted to option (D) rather than to (B), which is designated as the "correct" response.

Insofar as minority students consider themselves to have been victims of harsh legal results, they may recoil from selecting the correct answer. One study has noted that "Blacks were much more likely than whites to have been strongly motivated by the desires to restructure society and to serve the underprivileged."[101] These students may prefer legal principles which have a place for mercy, even if those principles involve reforms of current law. These instincts often arise during lively first-year law school classes in which the law of bailment is used to introduce students to the law of property. Those who recall such exchanges of opinions and values cannot assert that those students who express dismay at results such as the one in this question lack legal ability. All that can be said is that the common law does not embody their preferred results. To systematically exclude candidates who hold such views gives undue preference to students familiar with actual legal results and unncessarily limits the opportunities for diverse viewpoints to be represented in law school classes.

i. Anti-Labor Sentiment

Over half of the non-white law students have fathers who held blue-collar or service jobs. In contrast, over 85 percent of white law students have fathers who held white-collar jobs.[102] This may indicate that minority law candidates are more likely to sympathize with labor in labor-management disputes. Thus, while labor sentiments may be held by white candidates, anti-labor sentiments may be disproportionately disturbing to minority candidates.

Those reading the sentences contained in the Writing Ability sections of the *Bulletin* and sample LSAT will encounter the following references to labor:

4. The grievance committee ought, in all fairness and as part
A B
of its regular procedure, discuss with the supervisor the
(B) C
particular charges that disgruntled employees have
D
brought against him. No error
(D) E

Candidates who are uncertain about the wisdom of the suggested procedure because of the danger of retaliation against disgruntled employees by supervisors may be distracted by the substance of the sentence and overlook the error in its grammar.

13. Real wages began to rise long before unions became
A
powerful, and the level of real wages in various countries
(A) B
bear no relation to the strength of the union movement
C D
in those countries. No error
(D) E

This statement makes the entire labor union movement seem like much ado about nothing. Isn't there another side to the story?

25. In the period since 1957 when wages, salaries, and
fringe benefits climbed to the highest levels in history,
A
absenteeism resulting from real or fancied illnesses have
B C
been increasing at an average annual rate of 2.8 per cent.
(C) D
No error
E

Does this statement suggest that higher wages cause real illnesses to increase? Does this statement suggest that higher wages cause more absenteeism due to fancied illnesses? Does this statement suggest that higher wages allow workers to be absent more often due to real illnesses they used to ignore in order to earn a living wage? Is this statement likely to have been made by a union organizer?

No statements praising the union movement appear in the Writing Ability section. The net effect of these remarks may be to create anxiety in candidates sympathetic with the union movement. They may literally not be able to see straight, making the detection of subtle errors more difficult.

Candidates who are unsympathetic towards unions will read statements which reinforce their prejudices. The process of identifying errors in grammar, diction and verbosity will be easier because their attention is not distracted by disagreements with the content of the statements. In addition, because their beliefs are confirmed in these statements their level of anxiety will not be raised as they examine other statements on the test.

One case in the Principles and Cases section may be easier for those viewing the facts from management's perspective and may be unnecessarily difficult for those who identify with the worker in the situation. Consider the following Principle and Case:

PRINCIPLE

An employee is entitled to receive workmen's compensation benefits whenever he suffers a personal injury by accident arising out of and in the course of his employment. An accident is an unlooked-for mishap or an untoward event which is not expected or

designed. An accident arises out of employment when it results from a risk to which the employee is subjected by his employment and to which he would not have been subjected had he not been so employed. An accident is in the course of employment when it takes place within the period of employment, at a place where the employee reasonably may be, and while the employee is carrying out his duties or something incidental thereto or while he is performing some other act which he has in good faith undertaken to advance the interests of his employer.

2. Loren is a coal miner who has been employed by the West County Coal Company for thirty-four years. Loren was aware when he applied for employment at the company that coal mining was a dangerous occupation, but he applied for the job because it was the only one he could find that would pay him enough to support his family. On the application form, the company had printed, "Remuneration has been adjusted to compensate for the dangers incident to this position." Recently, Loren has had increasing difficulty in breathing, and a doctor has informed him that he has black lung, a crippling disease common to coal miners that is caused by the continued inhalation of coal dust. Loren claimed workmen's compensation benefits from the West County Coal Company. *Held*, for the West County Coal Company.

Which of the following was the major factor in the disposition of this case *in light of the principle above?*

(A) Loren knew that coal mining was a dangerous occupation when he applied for the job.
(B) The application form stated that the wages paid were compensation for dangerous work.
(C) Loren's disability was incurred while he was working as a miner for West County.
(D) Black lung is a disease common to coal miners.

The first jarring aspect of this case is the result. Despite the sad fate of Loren, the coal company wins against his claim for workmen's compensation. The cynical candidate who assumes this is typical of the legal system in coal mining areas must then choose the reason for the result.

Option (A) is the answer which a cynic might expect to get from those denying benefits to a coalminer. It evokes an aspect of the Principle, since only "unlooked-for" events may receive compensation. This does not necessarily govern the result, however, since the danger which Loren probably knew about when he applied for the job thirty-four years ago involved collapsing coal mines. Black lung disease is a relatively recent addition to the list of commonly recognized risks of coal mining. Option (B) is attractive because the statement of the case highlights the application form. Those choosing answers because the fact situation seems to suggest the result (See §IV-D-4-e) will get this answer wrong. Yet there is a lingering question of whether knowledge of the law of worker's compensation and the policy of disallowing contractual agreements to exempt risks from coverage would not help some candidates reject this option. Option (C) fits the Principle but not the result in the case. Although those choosing this option can be easily shown to have erred, there is the possibility that those erring will be disproportionately represented by those sympathetic towards Loren.

Option (D), the desired response, is a troubling choice. As it stands, the statement is either too long or too short. The key to selecting this response, according to the explanation, is the recognition that black lung is a disease and not "an accident, which is a single event." Were the option limited to the statement: "Black lung is a disease," the point of the explanation may be apparent from the statement. This is not clear, since the Principle defines an accident as either an "event" or a "mishap." Those conscious of the error in good writing known as "verbosity" in the Error Recognition section of Writing Ability may justifiably assume that mishap and event contribute different elements to the definition. Nonetheless, the shorter statement suggested above would at least raise the issue in candidates' minds. A longer statement: "Black lung is a disease common to coal miners that is caused by the continued inhalation of coal dust," might also evoke the issue of single events versus extended disabilities which the explanation relies upon to justify the preferred option. The option as stated, however, evokes quite a different concept. It does not draw attention to the fact that it is a disease, but to the fact that it "is a disease common to coal miners" which is involved. To some degree this raises the issue of predictable risks which are not covered by the Principle and in this sense is similar to Option (A).

Those familiar with the history of black lung politics in the coal fields will recognize that the miners' knowledge of the risks is recent and consider both Options (A) and (D) infirm for this reason. To a greater degree the option focuses on the fact that the disease is "common to coal miners." Those sympathetic with the miners may quickly reject this implication, since the number of claimants under the worker's compensation system should not determine the eligibility of each individual applicant.

Those sympathetic with management may have an easier time selecting the correct option. Recognizing that black lung disease is "common to coal miners" evokes a scene of hacking miners clamoring for compensation, with the attendant risk of bankrupting the compensation fund. Those embracing this perspective may choose the right answer for the wrong reasons. Only interviews can determine whether those choosing the correct option can duplicate the explanation.

j. Disregard of Bilingual Concerns

Consider the following sentence dealing with minority experiences in which candidates are supposed to identify errors:

> **7. Undoubtedly because of the terse situation, the school officials rapidly instituted many changes to make the curriculum, the faculty, and the teaching materials more approximate for the students of the Spanish-speaking community.**

The explanation indicates that there are two errors in diction.

> The first error is "terse," which has been incorrectly substituted for "tense,"

It may be typical for a discussion of school problems to refer to a "tense" situation, but the thoughtful candidate who is sensitive to the situations plaguing many Spanish-speaking communities will justifiably wonder whether "terse" is an error. In schools comprised of teachers who speak English and students who speak Spanish, very little conversation between student and teacher can occur. It would be correct, although no necessarily common, to label this a "terse" situation. To change the word to "tense" would change the meaning of the sentence. Unfortunately, although the sentence refers to a "Spanish-speaking community," the explanation does not acknowledge this ambiguity stemming from the problem of bilingual education.

The second error, the substitution of "approximate" for "appropriate" may save candidates who are confused by the first purported error. Yet one cannot be assured that there will always be two diction errors in the same sentence. Were there such an assurance, those cognizant of the pattern could literally double-check their conclusions—that is, of course, unless one of the two errors eluded them.

k. Unnecessary Confusion with Black Standard English

Candidates are given the following admonition in taking the Error Recognition section:

> You must be able to recognize the inappropriate use of slang or nonstandard English. This does not mean that slang or colloquial words are inherently wrong or meaningless. It means only that you should be able to detect the inappropriate use of such words in the context of standard written English.
>
> For example, such expressions as *no way* or *ripped off* reflect levels of diction inappropriate for standard written English. Other less obvious examples—such as *hangup* instead of *problem*, *fork over* instead of *provide*, *kids* instead of *students*—may also constitute errors in diction.

These are familiar warnings for children raised in cultural settings where two languages are spoken or where Black Standard English is the form that relaxed conversation takes. For these children, knowledge of the "correct" way to speak in school and other formal settings is a necessity to being accepted as a peer. For those who pursue formal education to the point of applying to law school, this constant vigilance to proper English has made them particularly conscious of the common pitfalls of grammar and diction. In a sense, the section is a natural extension of the process which minority students constantly pursue—provided that the questions are fair tests of the difference between errors likely to be made unless avoided and standard English likely to be written.

Unfortunately, several questions in the *Bulletin* heighten the danger that candidates will choose an incorrect response for perfectly reasonable and grammatical reasons. To label these candidates as lacking in Writing Ability is inappropriate, since the items raise questions about whether a candidate would be likely to write errors such as those in the items or whether a candidate selecting the incorrect response would be producing incorrect written English by so doing.

The first such item is consciously related to black culture, but the item also creates unnecessary confusion with Black Standard English and may be a trap for the wary black candidate.

3. A mural painted by Bill Walker and others, "Wall of Dignity" faces a rubble-strewn lot in Detroit's East Side slums, where it presents to residents a history of the black man that begins in ancient Egypt.

The wary black candidate will examine the verb "begins," recognize that its subject is "history" rather than "mural," further recognize that confusion between the past and present tenses of verbs is a common feature of Black Standard English,[103] and decide that there is an error of grammar—"begins" should be "began." Such a candidate would be wrong.

According to the explanation:

> There is no error in tense, since "begins" is an acceptable use of the historical present.

Yet the "historical present" is an obscure verb form. It does not appear in the several texts in college bookstores sold as grammar reviews. It is quite possible that candidates considering this sentence correct will have trusted to their "ear" without being able to correctly identify the verb as the "historical present."

Any candidate searching carefully for errors is likely to have reason to identify still another error in the sentence. A comma could be placed after "Dignity" indicating that the title of the painting was the modifier of "mural" which is the subject of "faces." While this would be a perfectly natural correction to make and completely grammatical keeping with the sense of the sentence, it would be an error on the sample LSAT question. The explanation gives no credence to such a possibility, arguing instead that:

> The first phrase, "A mural painted by Bill Walker and others," modifies "Wall of Dignity," which is the subject of the sentence.

The cruel hoax played on grammar-conscious minority candidates is worth reflecting upon. A sentence obviously included in the test because its subject matter is supposedly "relevant" to black candidates is encountered. A comma is missing and a verb tense can be correctly changed to the past. The candidate may consider the question to be an easy one, confidently indicating that there is an error in grammar (two, in fact) and moving to the next item. Yet the correct designation would be "no error" although no inference is justified that candidates finding errors would lack writing ability. Those who would defend tests against charges of cultural bias would have additional ammunition, arguing that items which reflected the black experience produced no more favorable scores among minority candidates. Yet the relevance to actual black experience is doubtful, as is the assertion that those missing the item lack writing ability.

1. Ignorance of the History of Black Culture

Egypt reappears in the *Bulletin*. In the following sentence the explicit concern of the sentence is not with black culture, but those familiar with the history reflected in the mural discussed in the previous question may nontheless be confused.

2. Until Napoleon's dreams of empire led him into the land
A B
of the pharaohs, knowledge of Egypt's past was more
(B) C
obscure as the hieroglyphics on its stone facades. No
D E
error
(E)

Candidates familiar with the history of Egypt may dispute the apparent claim of this sentence, since Greek historians gave a full account of Egypt's era of high culture.[104] Although this history was later submerged under the more intensive investigation of Greek, Roman and European culture (or white culture), black candidates may argue that it was not more obscure than the hieroglyphics. Their confusion will be heightened as they examine the sentence for errors. The obvious focus for this examination is the phrase "more obscure as." The change which would keep the same meaning of the sentence would result in the phrase "more obscure than." Yet only the word "more" is underlined and therefore subject to alteration. Thus, the correct answer results in the phrase "as obscure as," which is an obvious change in the meaning. For candidates unconcerned with the meaning of the sentence, changing the meaning may not seem to be a serious issue, although few corrections involve changed meanings and the previous section had warned:

Do not make a choice that changes the meaning of the original sentence.

For candidates concerned with the challengeable assertion of the sentence, changing the meaning will be an important point, creating unusual confusion over the "rules" of the section, extra time pressures, and the increased possibility that an incorrect answer will be chosen.

m. Distrust of Popular Revolutions

Consider the following sentence which may contain an error:

> **35. The issue is not the motivation of the revolutionaries, nor even the kind of state they might establish, but rather the extent of their popular support.**

This statement reflects a cynical view of revolutionary movements. The people are seen as easily duped into following malevolent leaders who will establish repressive regimes. At least the sentence sees the motivation of leaders, the likely state to be established, and the extent of popular support as independent factors. The tone of the sentence indicates that it may have appeared in a military counterinsurgency manual. It is unlikely to have appeared in a sympathetic history of popular struggles for freedom.

Candidates may decide that "not" should be changed to "neither." This change would reflect good grammar and diction and probably a familiarity with the old rule of "either-or; neither-nor," which candidates learned years ago. The change would also change the tenor of the sentence, implicitly acknowledging that the revolutionaries did have motives worth admiring and would establish a kind of state worth supporting. At least those deciding that a change was appropriate could not be labelled as lacking in writing ability. While any candidate making the suggested change would be unfairly designated as ungrammatical by failing to recognize there was "no error" there is the danger that the controversial sentiments of the sentence will disproportionately affect candidates with certain political or cultural backgrounds.

NOTES

1. Monday, "Law School Admission Test," in *The Seventh Mental Measurement Yearbook* 1098 (O. Buros, ed. 1972); compare Wesman, "Law School Admission Test," in *The Fourth Mental Measurement Yearbook* 812, 815 (O. Buros, ed. 1953).

2. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 392 (1974) (testimony of F. Hart).

3. Reese, "The Standard Law School Admission Test," 1 J. Legal Ed. 126 (1948).

4. Law School Admission Services, *Operations Reference Manual* §2 at 3 (1973).

5. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 393 (1974) (testimony of F. Hart); McPeek & Carlson, "The Predictive Effectiveness of Several Experimental Item Types and the Operational Item Types in the Law School Admission Test in 1970-71," in 2(LSAC-74-1) 495, 498 (1974).

6. Olsen, "The Effectiveness of Tests of Writing Ability and of Directed Memory for Predicting Law School Grades and Ratings of Writing Ability," in 1(LSAC-56-1) at 55, 66 (1956).

7. Miller, "A Repetition Study of the Relationships Existing Among Scores on the LSAT, Writing Ability, and General Background Tests and Between These Scores and Other Candidate Variables," in 1(LSAC-63-1) at 237 (1963).

8. Hearings Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 412 (1974) (testimony of F. Hart). For a complete review of various modifications of the LSAT over the course of its use, see G. Saretzky, *Law School Admission Test Papers, 1945-1973* 7-13 (1974).

9. During 1975-76, 28 percent of those taking the LSAT were repeaters. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 581 (1977).

10. Law School Admission Council, *Law School Admission Bulletin and LSAT Preparation Material* 17 (1979).

11. Evans & Rock, "A Study of the Effects of Moderator Variables on the Prediction of Law School Performance," in 2(LSAC-73-2) at 357, 383 (1973).

12. *Id.*

13. *Id.*

14. Those who repeat the LSAT gain an average of 50 points over their first score. Miller, "A Study of the Relationships Existing Among Scores on the LSAT, Writing Ability, and General Background Tests and Between These Scores and Certain Other Candidate Variables," in 1(LSAC-62-1) at 191, 199 (1962); Schrader & Pitcher, "Interpreting Performance of Foreign Law

Students on the Law School Admission Test and the Test of English as a Foreign Language," in 2(LSAC-70-6) at 71, 79 (1970).

15. "For several years, it's been common knowledge on Ivy League campuses that for $200 a law student will take your Law Boards for you and guarantee a score of over 700. E.T.S. now fingerprints all those who show up for the Law Boards, but this only helps once they suspect someone has taken your exams for you, which only happens if you take the test once and do badly, then take it a second time and do dramatically better." Brill, "The Secrecy Behind the College Boards," *New York Magazine* at 71 (October 7, 1974); "ETS bases most of its suspicions about professional test-takers and imposters on investigations of cases in which candidates who take the LSAT twice exhibit improvements in their scores of 150 points or more. In the past year, such cases have accounted for the vast majority of security cancellations of LSAT scores. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 317 (1972).

16. Thresher, "Diversification in Educational Measurement," in College Entrance Examination Board, *Righting the Balance: Briefs* at 125, 137 (1970).

17. Reilly, "A Study of the Effectiveness of Empirical Item Option Weighting on the LSAT," in 2(LSAC-74-5) at 597, 598 (1974).

18. Davis, "Changing Examination Answers: An Educational Myth?" 50 J. Med. Educ. 686 (1975).

19. Miller, "a Repetition Study of the Relationships Existing Among Scores on the LSAT, Writing Ability, and General Background Tests and Between These Scores and Other Candidate Variables," in 1(LSAC-63-1) at 237, 242 (1963).

20. Federal Trade Commission, Boston Regional Office, "Staff Memorandum of the Boston Regional Office of the Federal Trade Commission: The Effects of Coaching on Standardized Admission Examinations," 31 (1978).

21. *Id.* at 37-40.

22. *Id.* at 43. The colleges named in the FTC report as offering LSAT preparation courses were: Columbia University, Bentley College, Fordham University, California State University, University of Michigan, Boston College, American University, Cornell University, Puget Sound, Monrovian, Colby, Adelphi, University of Massachusetts, Amherst, Boston University, Scranton, Mt. Holyoke, Chatham, Washington University, and Trinity (D.C.). *Id.* at 41 n. 58.

23. Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," 24 (1980).

24. *Id.* at 40.

25. Federal Trade Commission, Boston Regional Office, "Staff Memorandum of the Boston Regional Office of the Federal Trade Commission: The Effects of Coaching on Standardized Admission Examinations," 138 (1978).

26. *Id.* at 157.

27. *Id.*

28. Slack & Porter, "The Scholastic Aptitude Test: A Critical Appraisal," 50 Harvard Educational Review 154, 172 (1980).

29. Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," 65 (1980).

30. Federal Trade Commission, Boston Regional Office, "Staff Memorandum of the Boston Regional Office of the Federal Trade Commission: The Effects of Coaching on Standardized Admission Examinations," 37-40 (1978).

31. Stroud, "Reanalysis of the Federal Trade Commission Study of Commercial Coaching for the SAT," 98 printed as Appendix 2 in Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," (1980).

32. Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," 48 (1980).

33. Powers, "Critical Notes on the FTC Coaching Study," 86 printed in Appendix 1 in Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," (1980).

34. Federal Trade Commission, Bureau of Consumer Protection, "Effects of Coaching on Standardized Admission Examinations: Revised Statistical Analyses of Data Gathered by Boston Regional Office of the Federal Trade Commission," 9 (1979) (table 1).

35. Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," 49 (1980).

36. *Id.* at 48-49.

37. *Id.* at 49.

38. *Id.* at 50.

39. *Id.* at 40.

40. Stroud, "Reanalysis of the Federal Trade Commission Study of Commercial Coaching for the SAT," 107 printed as Appendix 2 in Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," (1980).

41. Federal Trade Commission, Boston Regional Office, "Staff Memorandum of the Boston Regional Office of the Federal Trade Commission: The Effects of Coaching on Standardized Admission Examinations," 111 (1978).

42. *Id.*

43. Messick, "The Effectiveness of Coaching for the SAT: Review and Reanalysis of Research from the Fifties to the FTC," 65 (1980).

44. S.5200-A, July 15, 1979.

45. Kappy & Donlon, "Test Speededness as a Factor in Sex Differences," 2 (April 6, 1977) (paper presented at annual meeting of National Council on Measurement in Education, New York) citing Flaugher & Pike, "Reactions to a Very Difficult Test by Inner City High School Population: A Test and Item Analysis," *Research Memorandum 70-11* (1970); Terranova, "The Relationship Between Test Scores and Test Time," 40 J. of Experimental Education 81 (1972); Wesman, "Some Effects of Speed in Test Use," 20 Educ. & Psych. Meas. 267 (1960).

46. Kappy & Donlon, "Test Speededness as a Factor in Sex Differences," 2 (April 6, 1977) (paper presented at annual meeting of National Council on Measurement in Education, New York).

47. Lord, "Interim Report on a Study in Speed Factors in Tests and in Course Grades," *Research Memorandum 52-14* 6 (1952).

48. Evans & Reilly, "A Study of Speededness as a Source of Test Bias," in 2(LSAC-71-2) at 111, 116 (1971). Candidates tested at regular testing center gained 22 points on one section of the LSAT when speed requirements were relaxed, while candidates tested at fee-free centers, located on predominantly black campuses, gained 33 points.

49. *Id.* The authors note the possibilities that the test may have been entirely too speeded for these candidates or that the candidates may not have understood that no penalty for incorrect answers is assessed in scoring the LSAT. The authors fail, however, to note the motivational issue associated with the fee-free test administration.

50. Evans & Reilly, "The LSAT Speededness Study Revisited: Final Report," in 2(LSAC-72-3) at 191 (1972).

51. *Id.* at 197.

52. See e.g. *Test Analysis, Law School Admission Test, XLS* (1975) (SR-75-74); *Test Analysis, Law School Admission Test, XLS2* (1975) (SR-75-75); *Test Analysis, Law School Admission Test, VLSI* (1975) (SR-75-01); *Test Analysis, Law School Admission Test, WLSI* (1976) (SR-76-03).

53. Pitcher, "Subgroup Validity Study," in 3(LSAC-76-6) at 413, 480 (1976) (table C.2).

54. Hearings Before the Subcomm. on Elementary, Secondary and Vocational Educ. of the House Comm. on Educ. and Labor, 96th Congress, 1st Sess. (338) (1979) (testimony of M. Ruud).

55. Letter of Franklin R. Evans, 2 (March 4, 1980), reproduced in Appendix B to this Report.

56. Johnson, "The Development and Use of Law Aptitude Tests," 3 J. Legal Educ. 192, 195 (1950). The MBE apparently scores all questions which have a positive discrimination index, even if that index is below .30.

57. "The discrimination index, a statistic obtained from the percentage of candidates in a high scoring group and that in a low scoring group, should generally be above .30 for each item used in the final form of a test." Coffman & Papachoristoy, "Experimental Objective Tests of Writing Ability for the Law School Admission Test," in 1(LSAC-55-1) at 43, 51 (1955).

58. Covington, "The Multistate Bar Examination," 41 *The Bar Examiner* 17 (1972).

59. L. Cronbach, *Essentials of Psychological Testing* 148 (3rd ed. 1969).

60. Hoffmann, "Psychometric Scientism," 48 Phi Delta Kappan 381, 383-84 (1967).

61. "Cautionary Policies Concerning Use of the Law School Admission Test, the Law School Data Assembly Service, and the Law School Candidate Referral Service," memorandum (Princeton, N.J.: Law School Admission Council, 1978) to Law School Deans, LSAC Council Representatives, Admissions Committees, and LSAC Board and Committee Members.

62. Flaugher, "The Many Definitions of Test Bias," *Research Memorandum 77-2*, 9 (1977).

63. Pitcher, "Subgroup Validity Study," in 3(LSAC-76-6) at 413, 481 (1976) (table C.3).

64. Stolz, "Training for the Public Profession of the Law: A Contemporary View," in *Proceedings, Association of American Law Schools, 1971 Annual Meeting, II* at 142, 174 (1971).

65. American Bar Association, *Approval of Law Schools: Standards and Rules of Procedure Standard* 502(a) (1973).

66. Law School Admission Services, *Operations Reference Manual*§2 at 4 (1979).

67. California Board of Legal Specialization, "New Standards Set for Certification and Recertification of Legal Specialist," 50 Cal.St.B.J. 309 (1975).

68. Pitcher, "Subgroup Validity Study," in 3(LSAC-76-6) at 413, 480 (1976) (table C.2).

69. McPeek Pitcher, & Carlson, "The Predictive Effectiveness of Several Experimental Item Types and the Operational Item Types in the Law School Admission Test in 1970-71," in 2(LSAC-74-1) at 495, 520-21 (1974).

70. *Id.* citing L. Pike & F. Evans, *Effects of Special Instruction for Three Kinds of Mathematical Items* (College Entrance Examination Board Research Report 1) (1972).

71. Federal Trade Commission, Boston Regional Office, "Staff Memorandum of the Boston Regional Office of the Federal Trade Commission: The Effects of Coaching on Standardized Admission Examinations," 21 (1978).

72. See sources cited in note 52, *supra.*

73. McPeek, Pitcher & Carlson, "The Predictive Effectiveness of Several Experimental Item Types and the Operational Item Types in the Law School Admission Test in 1970-71," in 2(LSAC-74-1) at 495, 517 (1974).

74. Pitcher, "LSAT Part-score Validity Study," in 2(LSAC-74-2) at 535, 544 (1974).

75. Patton, "The Student, The Situation and Performance During the First Year of Law School," 21 J. Legal Educ. 10, 28 (1968).

76. Monday, "Law School Admission Test," in *The Seventh Mental Measurement Yearbook* 1099 (O. Buros, ed. 1972).

77. Wesman, "Law School Admission Test," in *The Fourth Mental Measurement Yearbook* 812, 815 (O. Buros, ed. 1953); Monday, "Law School Admission Test," in *The Seventh Mental Measurement Yearbook* 1099 (O. Buros, ed. 1972).

78. Wesman, "Law School Admission Test," in *The Fourth Mental Measurement Yearbook* 812, 814 (O. Buros, ed. 1953).

79. Winterbottom, Pitcher & Miller, "Report on the Readministration of the LSAT to Third-year Students," in 1(LSAC-63-3) at 255, 260 (1963).

80. Wesman, "Law School Admission Test," in *The Fourth Mental Measurement Yearbook* 812, 815 (O. Buros, ed. 1953).

81. Klein, Rock, & Evans, "Predicting Success in Law School with Moderators," in 1(LSAC-67-1) at 386, 392 (1967).

82. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 The Black Law Journal 527, 528 (1975).

83. Fremer & Chandler, "Special Studies," in *The College Board Admissions Testing Program: A Technical Report on Research and Development Activities Relating to the Scholastic Aptitude Tests* 171 (W. Angoff, ed. 1971).

84. Flaugher & Schrader, "Eliminating Differentially Difficult Items as an Approach to Test Bias," *Research Bulletin 78-4* 7-8 (1978).

85. Swineford, "Comparisons of Black Candidates and Chicano Candidates with White Candidates," in 2(LSAC-72-6) at 261, 262 (1972).

86. Carp, Johnson & Tibby, "Report on LSAT/San Francisco Consortium Project in that Area," in 2(LSAC-72-1) at 173 (1972).

87. Coffman & Papachristou, "Experimental Objective Tests of Writing Ability for the Law School Admission Test," in 1(LSAC-55-1) at 43, 48 (1955).

88. *Id.* at 50.

89. Thorne, "Professional Education in Law," in *Education for the Professions of Medicine, Law, Theology, and Social Welfare* 160 (E. Hughes, ed. 1973).

90. Pine & Weiss, "Effects of Item Characteristics on Test Fairness," 25 Research Report 76-5 (University of Minnesota, 1976).

91. Green, "Racial and Ethnic Bias in Test Construction," ii (CTB/McGraw Hill, Monterey, Calif., 1971).

92. "Specifications for the SAT-verbal call for a mean equated delta of 11.7 (a delta of 13 means that 50% of the candidates answered correctly) and a standard deviation of equated deltas of 2.9. The biserial correlations must be at least .30 and average .42." Donlon & Angoff, "The Scholastic Aptitude

Test," in *The College Board Admissions Testing Program: A Technical Report on Research and Development Activities Relating to the Scholastic Aptitude Tests* at 23 (W. Angoff, ed. 1971). The LSAT specifications require deltas ranging from 8 to 18. See letter of Franklin R. Evans, 1 (March 4, 1980) reproduced in Appendix B to this Report. No biserial correlations are published, however.

93. Donlon & Angoff, "The Scholastic Aptitude Test," in *The College Board Admissions Testing Program: A Technical Report on Research and Development Activities Relating to the Scholastic Aptitude Tests* at 27 (W. Angoff, ed. 1971).

94. Shepard, Camilli & Averill, "Comparison of Six Procedures for Detecting Test Item Bias Using Both Internal and External Ability Criteria," 3 paper presented at the annual meeting of the National Council on Measurement in Education, Boston, April 1980.

95. *Id.*

96. For a discussion of this question and the reactions of one black student, see Clark, "What is Your Tolerance for Ambiguity?" 4 Learning & Law 12, 54 (1977).

97. Smith, "Double Exposure: The Sinister Magic That Would Turn Black Students Into White Lawyers," 2 Learning & Law 24, 28 (1975).

98. Although this strategy depends on using the options to decide who wins before deciding why, a common error involves deciding who should win merely on the basis of the fact situation without first evaluating the options, see Carp, Johnson & Tibby, "Report on LSAT/San Francisco Consortium Project in that area," in 2(LSAC-72-1) at 173, 177 (1972).

99. It is of interest to note that the LSAT scores of rural law students are below average, but their UGPAs and law grades are above average, see Evans & Rock, "A Study of the Effects of Moderator Variables on the Prediction of Law School Performance," in 2(LSAC-73-2) at 357,374 (1973).

100. Miller, "A Follow-up Study of Personality Factors as Predictors of Law Student Performance," in 1(LSAC-73-2) at 403, 412 (1967).

101. Stevens, "Law Schools and Law Students," 59 Vir. L. Rev. 551, 613 (1973).

102. Id. at 600.

103. W. Hall & R. Freedle, *Culture and Language* 34 (1975) (table 1).

104. *The History of Herodotus* (G. Rawlinson, trans. 1928); *Diodorus Siculus, Histoire Universelle* (A. Terrasson, 1758).

V. Combining College Grades and Law School Admission Test Scores into a Formula

Law school admissions cannot now be based solely on evaluations of college grades. The ABA accreditation standards demand that all law schools use the LSAT in their admissions process. Similarly, law school admissions cannot now be based solely on a comparison of LSAT scores. The developers of the LSAT have continually warned that the LSAT should never be the sole basis for an admissions decision. Thus, the contemporary problem for law school admission officials is how to combine grades and test scores during the admissions process.

The correct method for combining grades and test scores has been a mystery ever since the LSAT originated in 1948. For the bulk of the test's existence, the combination process was an unsystematic one, differing from school to school, typically based on common sense but not specific statistics. In recent years, however, there has been a rapid introduction of empirically-based, statistically-derived formulas which combine LSAT and UGPA into a single formula with which to compare all candidates for admission. There is the danger that the introduction of statistical rationales for a particular formula will expunge common sense from the process. Fortunately, this is not necessarily the case. Harvard Law School, for example, has developed an "optimum" statistical weighting which would put approximately 55-60 percent weight on the LSAT. Nonetheless, a combination weighting each element equally has been used, "because the Committee has been reluctant to weigh the score from a single test more heavily than several years of undergraduate academic work."[1] Yet the mystique of statistics and subtle pressures for conformity make such judgments in the face of numbers seem the exception rather than the rule.

A. Predictable Variation in Empirical Formulas

Those who have surveyed a number of different law schools during the 1970s have remarked on the variety of formulas employed at different law schools. The baseline of analysis is a formula which would convert the scales of UGPA and LSAT into a comparable metric. Since the LSAT is scored on a scale of 200-800 and UGPA is converted by the Law School Data Assembly Service to a scale of 1.00 to 4.00, a formula which multiplies UGPA by 200 is one method of attempting to give equal weight to the two variables in the formula.[2] According to this method, a formula which multiplied UGPA by less than 200 would be giving more weight to LSAT than to UGPA; a formula weighting UGPA more would multiply grades by more than 200.

One survey of law school admission formulas used during 1971 compared eight randomly chosen formulas. One school multiplied UGPA by only 71, while another school multiplied UGPA by 214. The authors noted that:

> One school gave 300 percent more weight to undergraduate grades than did another, and it is difficult to believe that such discrepancies represent real differences between the law schools in question.[3]

Similarly, the 115 validity studies conducted in 1972-73 and 1973-74 produced considerable variation in the weights assigned each predictor in "optimally" weighted formulas. The lowest multiplier for UGPA was 35, the highest multiplier was over 600.[4] The ABA accreditation requirement that all law schools use the LSAT or an acceptable alternative is apparently designed to provide some uniformity in the admissions policies at all accredited law schools. Yet the combined formulas of various schools vary so widely that considerable instability exists in the practical admissions policies of various schools.

The instability found among law schools in a single year is also apparent at individual law school validity studies from year to year. Of the 150 law schools which had validity studies conducted for them by ETS since the LSAT was instituted in 1948, 102 had received a validity study in one year which indicated that UGPA should be given equal or greater weight when combined with LSAT, while another validity study conducted at the same law school for another entering class indicated that the LSAT should be given greater weight.[5]

The result of this instability of findings is confusion in law school admissions. Although the justification for the LSAT is a common measure against which all candidates can be compared, the statistical studies which form the current basis for combining test scores with grades vitiate this rationale. Nevertheless, students will be ranked differently at different law schools, depending on each school's formula. More confusing is the fact that students with identical test scores and grades will be evaluated differently by the same law school at different application periods. Previous research has been designed to justify using the LSAT as an adjunct to UGPA. This chapter evaluates the justifications used to select a *particular* combination of the two admission prerequisites. It argues that each rationale for selecting a combined formula actually introduces instability into the admissions process.

B. The Pendulum Effect

An understanding of the continual fluctuation in validity results can begin with an explanation of a statistical phenomenon which can be labelled the "pendulum effect." It is an effect which results from "restriction of range" problems when two or more variables are involved in the admissions process. If one admission year places great weight on LSAT scores, for example, those admitted during that year will exhibit quite similar LSAT scores. The UGPAs of admitted candidates, however, will vary considerably more, since little weight was placed on this factor in selecting the student body. When a validity study is conducted on this class of students, the restriction of range is LSAT scores caused by the admissions policy will produce a comparatively low correlation coefficient for the LSAT. This is because students with essentially the same LSAT scores *cannot* be distinguished on the basis of test scores. Yet these students will eventually earn grades ranging from top to bottom in law school despite their similar test scores. In contrast, the larger range of UGPAs among these same students will produce a relatively high correlation coefficient for college grades.

If a law school then changes its admission policies on the basis of such validity results, it will place relatively greater weight on UGPA and less weight on LSAT scores. The second student body will exhibit similar college grades and a more varied range of LSAT scores. A second validity study conducted on this class will show the LSAT as relatively more valid and UGPA as relatively less valid. As the former Harvard admissions officer, Dean K. Whitla, has noted: "(u)nfortunately, such occurrences are not rare, nor are misinterpretation of such statistical artifacts."[6]

There is some indication that such a pendulum effect has been occurring on a national scale. In 1971 a survey of law school admission policies revealed a marked propensity to weight UGPA more heavily than LSAT scores. As the authors of the survey report summarized the results:

> The vast majority of schools which responded to the questionnaires in non-percentage terms indicated that they either weighted undergraduate grade averages and LSAT scores equally or that they place greater weight to undergraduate grade average. Only a few schools placed greater weight on LSAT scores than on undergraduate averages.[7]

Three years later the President of the Law School Admission Council testified in Congress about the relative validity of the two predictors, indicating that:

> most validity studies have shown that if a school had to choose between the two, the undergraduate grade point average would give somewhat better prediction that (sic) would the LSAT alone.[8]

Despite these prevalent policies and validity study results, law schools receiving validity studies during 1979 are being confronted with a quite different situation. Each school is presented three different formulas, one of which is labelled "Empirical Bayes," a second labelled "Least Squares" and a third labelled "Constant." Of the eight individual law school validity studies reviewed during the current investigation, the highest weight assigned to UGPA in any of the formulas resulted in multiplying UGPA by 144.02. In other words, no law school in this sample was given a formula which would weight UGPA equally with LSAT. One of the three formulas, the "Constant" formula, provides a multiplier of 117.03 for UGPA in all validity studies. This multiplier is a decrease from those offered in previous year's validity studies. For example, schools receiving validity studies during 1978 were presented with a formula representing the "average weight based on 1973+1974+1975 entering classes at 123 law schools." This formula multiplies UGPA by 130. Schools receiving validity studies in 1976 were presented with a similar formula representing the "average weight based on

1973+1974 entering classes at 114 law schools." This formula multiplies UGPA by 135. Thus, over the course of three years, law schools have been encouraged to place less and less weight on UGPA in favor of the LSAT. While law schools are not required to use these average or constant formulas, their inclusion in validity studies stems from a belief by some that a formula based on more than one school will be more justifiable. Yet the variation in these formulas over a short period of time casts doubt on this assumption.

The belief that a formula based on results at more than one law school will reduce the variation in weights assigned from year to year has prompted the introduction of the "Empirical Bayes" formula into validity studies.[9] This formula, along with the "Constant" formula, is designed to avoid the instability resulting from formulas based on experience at a single law school. Yet, of the eight 1979 validity studies reviewed during the current investigation, only one gave more weight to UGPA under the "Empirical Bayes" formula than under the "Constant" formula. Thus, as a solution to the variation in weights assigned to UGPA by most law schools over the course of the last several years, this new formula offers little solace. Instead, it seems to suggest that even less weight be assigned to UGPA than under previous formulas.

It is possible that the introduction of formulas based on national experience at this time is itself an accident of history. If the formulas were based on the experience of law schools until 1973, indications are that more weight would be assigned to UGPA. However, the formulas now suggest that more weight be assigned to LSAT. This current suggestion may be merely a reflection of a pendulum effect throughout the nation's law schools. A nationwide formula may reduce the variation in formulas among law schools within a single year, but it does not solve the variation in formulas from year to year. If a further measure is taken of instituting the current formulas as perennial formulas, a swing in the pendulum placing more weight on LSAT scores will have been legislated as the "correct" formula on the basis of predictable statistical artifacts.

The artificial nature of assigned weights in formulas is often disguised by substantive interpretations of the statistical results. For example, it is not uncommon to hear that "grade inflation" has created the current statistical results assigning greater weight to the LSAT. Yet, independent evidence indicates that grade inflation may be on the wane.

> In a study of 149 schools, Michigan State Prof. Arvo Juola found that grades rose steadily from an average of 2.4 to 2.8 between 1965 and 1974 (on the scale of 4.0 for an A, 3.0 for a B). Since 1975, however, averages have fallen to 2.7.[111]

It is ironic if college officials are taking measures to increase the credibility of the grades awarded to their students at the same time predictable statistical fluctuations are encouraging law school admission officials to place less and less weight on those grades. This conclusion suggests that the focus for reform should be in admission formulas rather than in grading standards.

C. The Interaction of the Applicant Pool with the Admissions Formula

Faced with the perplexing complexity of the issues surrounding the proper combination of UGPA and LSAT into a single formula, some may be inclined to follow the course chosen by Harvard Law School and assign equal weight to each element of the formula. This decision would essentially abandon efforts to fine tune the combination and settle for the mechanical operation of putting both criteria on a common metric, typically by multiplying UGPA by 200. However, whether admissions officials choose to rely on empirical validity studies or rough rules of thumb to justify a particular combination, their choice of a formula does not end the problems associated with a combined formula.

A further issue involves the variability in LSAT scores and UGPAs among the applicants to a particular school. The variability of scores and grades within a population is typically measured in terms of the standard deviation of grades or scores. A small standard deviation indicates that there is little variability—candidates bunch around the average. A large standard deviation indicates that there is great variability—candidates disperse themselves along a wide range of scores on either side of the average. Even though efforts have been made to put both LSAT and UGPA on a common metric, their variability within the applicant pool will not necessarily be equal.

When there is a difference in the variability among candidates on different criteria, the weight which each criteria will exert during the admissions process will differ accordingly:

> The factor that has the greatest score variability will always contribute *more actual weight* than intended; and conversely, the factor that has the least score variability will always contribute *less actual weight* than intended. (Emphasis in original.)[11]

This effect has been discussed in research sponsored by the Law School Admission Council,[12] and its potential significance has been indicated in validity studies prepared for individual law schools. Nonetheless, its relevance to law school admissions policies is apparently little known. Its importance became clear during this investigation by comparing validity studies prepared in the same year for different law schools. For example, all studies conducted in 1978 contained a formula representing the "average weight based on 1973+1974+1975 entering classes at 123 law schools." All studies reported that UGPA was multiplied by 130 in this formula. The formula, then, was presented as one solution to the question of how to combine UGPA and LSAT into a single formula.

The formula, however, could not guarantee that UGPA and LSAT would receive the same *actual* weight during the admissions process at various schools adopting it. This was indicated but not explained in the portion of each validity study which displayed the "percent weight" associated with LSAT and UGPA in the formula. Interestingly although the formula was the same in all validity studies, the percent weight associated with LSAT, for example, varied considerably. When the validity studies prepared for nine law schools were compared, the percent weight associated with LSAT ranged from 62 percent to 52 percent. Two schools were told that the LSAT had 60 percent weight; two were told it had 52 percent weight. The other five schools each had a different weight associated with LSAT. Yet this variation in weights was not revealed to each individual law school. Only a comparison of validity studies prepared for different schools revealed the variation. Validity studies prepared during 1979 offered a "constant" formula reflecting the average experience at law schools, but no indication of the weight assigned to each element of the formula.

The weights assigned each element of formulas produced for validity studies from 1976-78 were actually reflections of the weight which would be associated with LSAT and UGPA if the *accepted* students were to be ranked. These weights, therefore, are not accurate reflections of the effects which a particular formula would have on a pool of applicants. Nonetheless, the point remains that the impact of a formula on the admissions process cannot be assessed merely by examining the intended weights assigned to LSAT and UGPA. Only a careful examination of the applicant pool can indicate what the actual impact of a formula will be.[13]

The difference between intended and actual effects can be illustrated with a hypothetical law school. Suppose that a law school were convinced that logic and common sense required that UGPA be given greater weight than LSAT scores in the admissions process. Suppose further that this policy decision were reflected in a formula assigning greater weight to UGPA and in a public pronouncement that applicants with strong UGPAs would be considered most favorably during the admissions process. If the policy of the school were heard and heeded by most potential applicants, so that those with good grades and poor test scores applied and those with poor grades and good test scores applied elsewhere instead, the actual applicant pool would have little variability on UGPA and greater variability on LSAT scores. As the admissions process progressed, the LSAT would therefore exert greater influence on admissions decisions than intended, while the UGPA exerted less than its intended influence. The announced objectives of the school would have been effectively reversed by a statistical artifact.

This statistical phenomenon suggests a reappraisal of the rationale sometimes offered for including the LSAT as an admissions prerequisite. As discussed earlier, admissions officials often express discomfort when asked to choose between two candidates with UGPAs differing by only a few hundredths of a point on a 4-point scale. Yet these same officials occasionally candidly admit that they make decisions on the basis of small differences in LSAT scores between two applicants. Thus, the LSAT is in one sense the substitute for an equally difficult choice based on UGPA. If there were a generally high correlation between LSAT and UGPA within the applicant pool, one could at least take solace in the fact that the two criteria reinforced each other. It is conceivable that an insignificant difference between two candidates on UGPA would be combined by an insignificant difference on LSAT scores to produce a significant difference in the combination of the two predictors. A decision based on the combined formula might then be justifiable. However, as discussed earlier, there is a zero or negative correlation between UGPA and LSAT within most law school student bodies. Thus, those who receive the greatest amount of attention during the admissions process—those with marginal qualifications—typically require a comparison of discrepant predictors. For example, a student with high grades and low test scores must be compared with a student with low grades and high test scores. When the focus of concern is expanded to include entire groups of applicants who are ranked according to a formula combining UGPA and LSAT, the problem of discrepant predictors becomes greater.

The effect of differential variability in LSAT and UGPA becomes important when insignificant differences result in significant decisions about admission to law school. The LSAT may be assuming greater influence on admission decisions, regardless of the formula chosen by schools, simply because its scoring scale produces greater variability among candidates than does the UGPA scale. In other words, simply because the LSAT divides the applicant pool more discretely than does the UGPA, it influences admissions decisions more. Although the technical literature accompanying the LSAT warns that the standard error of measurement is +/-30 points, the wide range of scores among applicants means that the LSAT has a greater influence on admission decisions than does UGPA when candidates are ranked within a large group on the basis of a formula combining the two criteria. Thus, the scoring scale of the LSAT may be guaranteeing its continued importance in law school admissions regardless of its predictive validity or of its intended weight in a chosen formula.

D. The Impact of Combined Formulas on the Admission Opportunities of Minority Applicants

If applicants with equal college grade point averages were given equal opportunities for admission regardless of their racial background, there would have been more black and chicano law students entering in 1976 than there actually were.[14] Yet, because LSAT scores must be included in the admissions process at all ABA-accredited law schools, this scenario cannot be directly implemented. The question for minority admission opportunities is whether the addition of the LSAT in a combined formula unjustifiably restricts opportunities.

The resolution of this question involves several interrelated issues. The appropriate test for balancing these conflicting concerns has been formulated by the courts in the course of employment discrimination litigation. Title VII of the Civil Rights Act of 1964[15] does not directly apply to the law school admission process, but the standards it established have clear relevance. When an alleged victim of a discriminatory practice can prove that there is a discriminatory impact from a practice, but the defendant can offer a rational reason for the practice, the courts resolve the conflict with the "business necessity" doctrine. The Fourth U.S. Circuit Court of Appeals has articulated the most widely accepted formulation of the "business necessity" doctrine:

> The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. Thus, the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with lesser differential racial impact.[16]

Chapter VII discusses the various ways in which "available. . . acceptable alternative policies" can be implemented. This section will explore the strength of reasons offered for combining LSAT and UGPA into a formula with which to compare candidates.

1. *Prediction and Prejudice*

The LSAT is discussed as an adjunct to UGPA and other information about an applicant. Various rationales are articulated to justify its relevance to the admissions decision. Yet, despite all the theories, the ultimate justification offered for combining LSAT and UGPA into a single formula is that the combination improves the predictive power which each of them displays alone. "All of the validity studies have shown that a combination of these two predictors yields the highest correlation coefficient."[17]

Table V indicates the predictive power of UGPA alone and of the combined formula during three periods. In addition, the increase in predictive power displayed by the formula over that displayed by UGPA alone is calculated. The predictive power is displayed with two statistics. The first, and perhaps more familiar, is the correlation coefficient.[18] The second is the variance in law school grades which is "explained" by the predictor. It is computed by squaring the correlation coefficient, and expressed as a percentage of the total variance to be explained.[19] For the purposes of comparison, the additional variance explained by the combined formula over the variance explained by UGPA alone is displayed in the last column.

TABLE V

	UGPA		UGPA & LSAT		
YR.	Correlation Coefficient	% of Variance Explained	Correlation Coefficient	% of Variance Explained	Additional variance explained by formula
1949[20]	.38	14%	.52	27%	13%
1963[21]	.36	13	.54	29	16
1973[22]	.25	6	.43	18	12

As can be readily seen, over the history of the LSAT a formula combining UGPA and LSAT has improved the prediction offered by UGPA alone by a constant amount, despite a change in the absolute predictive value of both UGPA and the formula over time.

The issue to be resolved is whether the additional 12-16 percent of variance in law school grades which is explained by a formula combining UGPA and LSAT over the variance explained by UGPA alone is worth the discriminatory impact which is produced by this combined formula. Since the discriminatory impact of the LSAT is greater than that of UGPA, the precise formula selected will determine the discriminatory impact of the formula.

A formula weighting LSAT relatively more than another formula will have a greater discriminatory impact. This fact was demonstrated by a comparison of hypothetical admissions processes applied to the national applicant pool in 1976. If all applicants were ranked on the basis of a formula combining UGPA and LSAT, the top 41,500 would contain a different number of minority applicants, depending on which formula was used. For comparison, a formula multiplying UGPA by 135, the multiplier in the "average" formula given to law schools in 1976 validity studies, was juxtaposed with a formula multiplying UGPA by 200, the multiplier which places UGPA and LSAT on the same metric. As expected, the formula giving greater weight to UGPA also included more minority students in the top 41,500 applicants.[23]

The evidence suggests, therefore, that the process of increasing predictive validity by adding the LSAT to UGPA in a formula, or by increasing the emphasis placed on the LSAT in the formula, is also a process which systematically excludes more and more minority applicants. Thus, the predictive validity is increased by the very same mechanism which increases the discriminatory impact of the admissions criteria. This fact would not be so disturbing if one could be certain that the increase in validity was the result of justifiable measurements of the applicant's qualifications. Unfortunately, simple mathematical comparisons do not offer us that assurance.

The problem underlying this apparent conflict between predictive validity and discriminatory impact involves a confusion between prediction and prejudice. So long as there is any difference in the average performance in law school between white and, for example, black students, then any prediction formula can be improved simply by adding an applicant's race to the formula. This statistical manipulation would be indistinguishable from the actions of a prejudiced individual who refused to evaluate an individual's qualifications without also considering an applicant's race. A prejudiced individual may refuse to admit any blacks, if the average black grades were lower in law school. Similarly, a statistically-oriented individual could prejudice individual members of a group by adding their race into the "prediction formula" and refusing to admit otherwise qualified black applicants. Seen in this way, prediction and prejudice are indistinguishable. Statistically, a proxy for race could act in a similar way to increase "prediction" while actually perpetuating prejudice.[24]

The possibility arises, therefore, that the LSAT is adding to the predictive validity of UGPA by acting as a proxy for race in a combined formula. A student may be rewarded more for being white than for being bright by the LSAT. This possibility has been implicit in some statements by ETS officials discussing the discriminatory impact of predictive tests. For example, William W. Turnbull, President of ETS, has reasoned:

> If school and college work is culture bound and if tests are devised mainly to predict success in such work, then it follows that culture-bound tests will do the best job of prediction.[25]

The direct analysis of sample LSAT questions in Chapter IV suggests the plausibility of a hypothesis that the LSAT contains bias against identifiable racial groups. Two types of statistical evidence buttress this impression. In combination, this evidence suggests the possibility that the combined formula may achieve apparent predictive validity by comparing students on a secretly biased test.

The first type of evidence buttressing the hypothesis that the LSAT is perpetuating prejudice more than it is improving prediction is statistical data comparing the discriminatory impact and predictive validity of the LSAT. The significance of this comparison was recently articulated as a definition of a biased predictor:

> A predictor is biased if it correlates more with group membership than with the criterion it is intended to predict, for under this condition the selected or rejected applicants are being rewarded or penalized on the basis of their group membership rather than just on the basis of those individual traits that are in fact relevant to the criterion.[26]

Only one study has permitted this definition of a biased predictor to be tested against LSAT data. That study compared the ability to identify applicants' race from their LSAT scores with the predictive ability of the LSAT among law students from a single racial group. The data indicates that the LSAT is considerably better at distinguishing between racial groups than it is at distinguishing relative law school grades among students from a single racial group. The results from five law schools are displayed in Table V. It indicates that the LSAT has an average correltion with racial group membership of .60, but an average correlation with first year law school average of only .23 for black students and .19 for white students. Thus, according to one published definition of a biased predictor, the LSAT is quite biased and its "predictive ability" may be largely due to its "prejudicial" impact on racial minorities.

TABLE VI
ABILITY OF THE LSAT TO DISTINGUISH RACIAL GROUPS OR TO PREDICT FIRST YEAR GRADES*

	A	B	C	D	E	AVERAGE
Distinguish Racial Groups Black/White	.62	.52	.68	.56	.61	.60
Predict First Year Grades for Black Law Students	.19	.27	.22	.10	.35	.23
Predict First Year Grades for White Law Students	.24	.16	.21	.22	.12	.19

*Based on Black and White law students entering law school in 1968, 1969, and 1970 for Schools A, B, and C; in 1969 and 1970 for schools D and E.

A second type of evidence compares the group differences on the LSAT with group differences in law school. Where the gap between average performance of racial groups is larger on the test than in school, test bias is a plausible explanation. The implications of such findings is discussed as follows:

> What appears to be happening here is that the test is measuring some factors that are common to it and the criterion variable and (since the correlation is less than perfect) some factors that are *not* shared between the test and criterion. Since the mean scores of the two groups differ more on the test than on the criterion, whatever factors are unique to the test differentiate the two groups much more sharply than the factors that are unique to the criterion. Thus, though the test is fair in relation to the *shared* variance it is unfair with respect to the variance that is unique to test or criterion, one or both. (Emphasis in original.)[28]

The one relevant study indicates that the LSAT divides white and black students more than a comparison of their law school grades does.[29]

2. *The Catch-22 of Improving Minority Grades and Increasing Emphasis on LSAT Scores*

The foregoing evidence suggests a frustrating scenario which may be developing. Data indicate that minority performance in college is much closer to that of white students than is the performance of minority candidates on the LSAT. At the same time, however, a rapid increase in the emphasis placed on the LSAT in prediction formulas is taking place. Since the LSAT has a persistent discriminatory impact, the progress of minority students in college is being devalued by formulas placing great weight on the LSAT.

It is possible that minority students are on an accelerating treadmill. The faster they catch up in college performance (and the evidence suggests that minority applicants have aready succeeded in college more than their admission experience to law school has reflected) the more emphasis is placed on the LSAT in prediction formulas. Thus, minority students are being forced to not only improve their college performance, but also their performance on the LSAT.

There are statistical phenomena which could create this treadmill effect without any malice attributable to those who unquestioningly follow the statistical results. The primary effect is an aspect of the restriction of range problem associated with two or more admission criteria. As discussed above, as admitted students become more homogenous on one criteria, such as UGPA, but relatively heterogeneous on another criteria, such as LSAT, a validity study conducted on such a student body will cause the LSAT to appear more valid than otherwise and the UGPA will appear less valid. The formula developed after such a validity study will place greater weight on the LSAT and less weight on UGPA.

Since minority students have competitive UGPAs but lag behind white students on the LSAT, their admission to law school will create the restriction of range problems outlined above. Over the course of several years, validity studies conducted on student bodies with significant numbers of minority students will indicate that the LSAT is more valid simply because there is more variation in the student body in that criterion. Formulas developed on the basis of such a validity study will place greater weight on the LSAT and make minority applicants appear progressively less qualified and in growing need of a preference. This gap between equal opportunity and admission according to academic ability will occur despite the actual accomplishments of minority students in college. In a sense, the gap will have been created precisely because of this high academic achievement.

This analysis suggests that the recent increased emphasis on LSAT in prediction formulas may not be simply the result of a "pendulum effect." The increased emphasis on the LSAT may be a direct, although unintended, result of significant, race-conscious admission programs. If this is so one would not expect a pendulum swing back in favor of UGPA in admission formulas, as was the case until the mid-1970s. Instead, ever-increasing emphasis on the LSAT may continue, as has been the case in validity studies conducted between 1976 and 1979.

A similar effect can occur during the admission process, regardless of the formula chosen by the law school. The effective weight associated with one element in a formula depends on the variability on that element in the applicant pool. The presence of a significant number of minority applicants will confront a law school with an applicant pool which has relatively greater variability on the LSAT than on UGPA. Whatever formula is applied to this pool will therefore place greater emphasis on the LSAT than intended by those who selected the formula. Minority applicants with low LSAT scores will have greater difficulty in gaining admission because of the greater effective weight placed on the LSAT during the admissions process.

Here again, minority students may be facing a rising barrier which is being unintentionally erected *because* they have done well in college but not on the LSAT. Hurdling the barrier will not involve improving performance in college. Indeed, if further improvement in college occurs without commensurate improvement in LSAT scores, the barrier to minority applicants with excellent college records will grow even higher. If the failure of minority students to improve their performance on the LSAT is due to cultural bias on the test, then nothing short of adjustments in LSAT scores will fairly reward minority students for their academic accomplishments.

The upshot of the various analyses is that statistics alone cannot determine the weights assigned to UGPA and LSAT in a prediction formula. The different discriminatory impact of the LSAT compared to UGPA means that any combination of the two must take account the relative discriminatory impact of potential formulas. In general, formulas placing greater weight on UGPA will benefit minority students. However, the presence of a significant number of minority students in a law school and the presence of a significant number of minority applicants in an applicant pool will both create statistical artifacts tending to increase the weight assigned to the LSAT and commensurately decrease admission opportunities for minority applicants. Minority applicants with excellent college records may face an increasingly difficult admissions process because other minority students with excellent college records, but poor LSAT scores, preceded them in law school. Only a candid recognition of these statistical artifacts and the possibility that bias in the LSAT is contributing to the statistical confusion can promise fair treatment to minority students who demonstrate academic ability in college.

NOTES

1. Simpson, "Admissions at Harvard Law School," 30 Harvard Law School Bulletin 14, 20-21 (1979).

2. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 308 (1972).

3. *Id.*

4. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 433 (1974) (Pitcher, "The Use of Validity Study Prediction Equations as Admission Index Formulas in the LSDAS System," Appendix C to testimony of F. Hart.)

5. Schrader, "Summary of Law School Validity Studies, 1948-1975," in 3(LSAC-76-8) at 519, 533-549 (1977) (table 2).

6. Whitla, "Evaluation of Decision Making: A Study of College Admissions," in *Handbbook of Measurement and Assessment in Behavioral Science* at 456, 468 (D. Whitla, ed. 1968).

7. Turnbull, McKee & Galloway, "Law School Admissions: A Descriptive Study," in 2(LSAC-72-7) at 265, 330 (1972).

8. Hearing Before the Special Subcomm. on Educ. of the House Committee on Educ. and Labor, 93d Congress, 2d Sess. 411 (1974) (testimony of F. Hart).

9. Rubin, "Using Empirical Bayes Techniques in the Law School Validity Studies," in (LSAC-78-1) (1977).

10. Sewall, "When An 'A' Deserves a 'B'," *Newsweek* 72 (Sept. 24, 1979).

11. Eisenberg & Reinke, "The Weighting of Promotion Scores on Promotion Examinations," 39 The Police Chief 45, 46 (June 1972).

12. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 433 (1974) (Pitcher, "The Use of Validity Study Prediction Equations as Admission Index Formulas in the LSDAS System," Appendix C to testimony of F. Hart).

13. A Review of Figure 1, in §II-D-2 will help the reader understand the way in which a formula interacts with the applicant pool to select a student body.

14. Cf. Table IV, §III-C-I.

15. 42 U.S.C. §2000e (supp. V 1975).

16. *Robinson v. Lorillard Corp.* 444 F. 2d 791, 798 (4th Cir.), cert. dismissed, 404 U.S. 1006 (1971).

17. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 410 (1974) (testimony of F. Hart).

18. See A.L. Edwards, *Statistical Methods for the Behavioral Sciences* 143, 145 (1966):

In the case of variables that are linearly related, the correlation coefficient is a measure of the degree of relationship present. . .The correlation coefficient may range in value from -1.00 to 1.00. A correlation coefficient of 1.00 indicates a perfect positive relationship between two variables; a correlation of 0 indicates no relationship between the two variables; and a correlation coefficient of -1.00 indicates a perfect negative relationship. Values between 0 and 1.00 or -1.00 indicate a varying degree of relationship.

19. See generally, L. Cronbach & G. Gleser, *Psychological Tests and Personnel Decisions* 28 (1957); Educational Testing Service, *Law School Validity Service* 9 (1976).

20. Schrader & Olsen, "The Law School Admission Test as a Predictor of Law School Grades," in 1(LSAC-50-1) at 1, 9 (1950).

21. Monday, "Law School Admission Test," in *The Seventh Mental Measurement Yearbook* 1099 (O. Buros, ed. 1972).

22. Educational Testing Service, *Law School Validity Service* 22 (1973).

23. The number of black applicants included in the top 41,500 rose from 369 to 411 when the multiplier for UGPA rose from 135 to 200. The comparable increase for chicano applicants was 227 to 246. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 617, 618 (1977) (tables 21, 22).

24. Hunter & Schmidt, "Critical Analysis of the Statistical and Ethical Implications of Various Definitions of *Test Bias*," 83 Psych. Bull. 1053, 1067 (1976).

25. Turnbull, "Forward" to R. Samuda, *Psychological Testing of American Minorities* ix (1975).

26. A. Jensen, *Bias in Mental Testing* 48 (1980).

27. Schrader & Pitcher, "Predicting Law School Grades for Black American Law Students," in 2(LSAC-73-6) at 450, 476 (Table 3), 491 (Table 10).

28. Thorndike, "Concepts of Culture Fairness," 8 J. Educ. Meas. 63, 67 (1971).

29. Schrader & Pitcher, "Predicting Law School Grades for Black American Law Students," in 2(LSAC-73-6) at 450 (1973). The correlation coefficients between race and LSAT scores ranged from .52 to .68; the correlation coefficients between race and first year law school average ranged from .31 to .47. *Id.* at 491 (table 10).

VI. The Criterion: Law School

This report has been concerned with the content validity and content bias of the LSAT and UGPA which are prerequisites to law study. This chapter will explore the various aspects of the criterion—law school performance—which could affect conclusions about the value of the prerequisites. First, since the ultimate goal of applicants is to become lawyers, all of the prerequisites to legal practice should have relevance to competent legal practice. Since admission prerequisites are imposed with the limited purpose of selecting successful first-year law students, the question whether more successful law students become more competent lawyers must be answered. If law school performance cannot be shown to relate to legal competence, then the assumption that candidates with the highest admission credentials will make the best lawyers is further attenuated. Conversely, if some students do poorly in law school for reasons unrelated to their potential legal competence, then the fact their poor law school performance can in some sense be "predicted" should not be the basis for excluding them from legal education opportunities.

Second, since the possible bias in admissions prerequisites is measured against performance during the first year of law school, the measure of performance during the first year of legal studies should be unbiased. "If the criterion measure is itself biased in an unknown direction and degree, no rational procedure can be set up for 'fair' use of the test."[1] A finding of bias in law school may thwart efforts to fine-tune adjustments in the admission prerequisites. It will also clarify validity results which purport to prove that prerequisites with a discriminatory impact against minority students nevertheless "predict" performance in law school. It may be that such "predictive" ability is the result of capitalizing on a bias which is common to both the prerequisites and the criterion.[2] Thus, rather than saying that a prerequisite is biased but predictive, it would be more accurate to say that the prerequisite is biased *and* predictive.

A third problem with the validity and possible bias of law school as a criterion involves the interaction between the prerequisites and the criterion. Poor performance on a prerequisite could artificially depress the performance of students in law school in two distinct ways. On the one hand, students may believe that their poor performance on the prerequisite is an accurate reflection of their ability. This belief may cause the students to despair at every excelling in law school. On the other hand, fellow students or professors may believe that poor performance on a prerequisite is an accurate reflection of ability. This belief may affect their interactions with these students in a way that decreases the opportunites for serious intellectual interactions.

Both of these processes are sometimes labelled "self-fulfilling prophesies" because initial beliefs affect ultimate performance. Yet the two processes are logically and practically distinct. The first belief may be impervious to change, thwarting efforts at tutoring or encouragement. The second belief may be equally unshakeable, thwarting the efforts of students labelled as "inferior" to prove their worth despite low admission indicators. The first belief can have devastating personal consequences for students who succumb to feelings of low self-esteem—consequences which may range far beyond the law school experience. The second belief perpetuates a long-standing history of claims that certain groups were "inferior" and blunts efforts to achieve true democracy among equals.

A. The First-Year Law School Experience

A common problem in validating admissions prerequisites involves the variety of schools which rely on the same criteria. It is often assumed that schools vary widely in their curriculm and teaching methods. Different schools are expected to have different validity results as a consequence of this variety. Indeed, this has been a major rationale for conducting separate validity studies for individual law schools.[3] Yet there are important similarities among law schools which makes the plausibility of widely different validity results quite remote. This similarity among law schools actually makes generalizations about the criterion of first year grades possible.

The similarity of first year law school experiences has been the subject of observation and analysis among law school officials for some time. The overall experience during the first year is homogeneous.

> Taking the run of national and regional full-time, university-connected law schools as a unit, a visitor could sit blindfold in, say, a first-year torts class in any one of them with some assurance that he would not be able to tell whether he was at Harvard, Yale, Columbia, Chicago, Stanford, or East Cupcake.[4]

This similarity derives mainly from a common curriculum and a common teaching method. "Most schools have what amounts to a common curriculum in the first year. The basic subjects are civil procedure, contracts, property, and torts."[5] The teaching method is known as the "Socratic Method" and involves a process of questioning by the professor, answering by a student, and further questioning by the professor. Both elements of the common first-year experience have been integral to law schools since they were introduced at Harvard Law School at the turn of the century.[6] It is the teaching method which has engendered the strongest reactions among law students.

For some law students, the Socratic method is a beneficial teaching method, spurring additional discussion and study after the class has ended.[7] The previous activities of some law students may have made them comfortable in an educational environment based on questions and refutations. A survey of law students indicated such a tendency.

> Of the men, 25 percent said that the enjoyment of arguing and debating was of "great" importance in their decision to enter law school. Twenty percent of the women also attributed "great" importance to the factor.[8]

For students who enjoy arguing, the first year classes may have provided a measure of pleasure as well as education.

For a sizeable percentage of law students, however, the first-year teaching methods seem to be positively harmful. The following comments elicited during interviews of law students are typical of those heard during student discussions of the first-year experience.

> I found that I do not respond very well to this kind of professor-student dialogue which is designed to make the student look like a fool.[9]

> At the time my roommate and myself were convinced that they

> weren't interested in helping us, that they were trying to do everything they could to get rid of us.[10]

> It seemed that professors were trying to prove to you that you weren't good enough to be a lawyer. . .from the way they expect a lot of you and ridicule you.[11]

> The form of teaching seemed to harass the student rather than to help him; if you learn anything you do it through your own efforts; professors never inquired as to whether students understood the questions they were raising or not (so) I felt lost for a while.[12]

When asked to recall their reactions to the first year of law school, students responded in similar ways. "The response given most frequently referred to a feeling state; e.g., I was: 'confused,' 'afraid,' 'uncertain,' etc."[13] In another survey of law students "(o)ver half of the students characterized their emotional reaction to law school in the first semester as 'tense'."[14]

The harsh and relatively unstructured nature of the first-year law school class has produced mixed educational results. In an in-depth series of interviews with first-year students at Yale Law School it was discovered that:

> after ten weeks of law school, the students were unable "to describe precisely the content of the 'skills' to which they claimed to have been exposed," and had "no clear definition. . .of the purposes of legal education."[15]

In a survey of the alumni of Harvard Law School, "(m)ore than a third of the Harvard alumni believed that large classes had made 'no contribution' to their legal education."[16]

The competitive atmosphere of the first-year law classroom often carries over to contact among law students outside of class. The comments of law students reflect this pervasive competition.

> Students here seem very serious about their work. Competition was very keen. . .I was very willing to forego social life. . .the first year no one seemed to want to make any real friends; others felt it would be too time consuming.[17]

> Everybody is so scared, the communication is very narrow, you know if you go to a party on Friday that's all they talked about is law and it really kind of bothered me.[18]

The competition produces some unfortunate victims. Those who lose the most are the students who leave law school. There once was a time when academic failures from law school were an expected part of the legal education process. In 1926-27, Harvard Law School failed over one-third of its entering class.[19] By 1962 it was "expected that about 60 percent of the students who begin law school will complete the course and receive their degree."[20] Recent years have witnessed a decrease in the number of law students failing to graduate. "The law school retention rate has risen from 63 percent of those enrolling in 1966 having graduated to 74 percent of those enrolling in 1969 having graduated."[21]

Since the academic qualifications of law students have risen dramatically in the past twenty years, the prevalence of law school dropouts is not primarily caused by academic deficiencies.[22] Instead, two studies have examined the personality types of law students who withdraw from law school and those who remain. Two categories of law students were compared. The first category was characterized by students "whose thinking is logical, analytical, critical, whose attitude is decisive and whose judgments are relatively uninfluenced by sympathy, whose makeup is tough-minded and confident."[23] The second category was characterized by a student "who is concerned chiefly with people, who values harmonious human contacts, is friendly, tactful, sympathetic, and loyal, who is warmed by approval and bothered by indifference and who tends to idealize what he admires."[24] The second group of students was four times more likely to withdraw from law school than the first group.[25] This fact may be a direct result of the atmosphere created during the first-year of law school. The fact that the second type of law student is prompted to withdraw from law school is a matter for reflection among legal educators.

Other students may persist in law studies, but perform below their potential as evidenced by law school admission criteria. It has been argued that

> many of these lower-achieving students might have performed better had there been more teachers who could effectively elicit and positively reinforce the student's attempts to learn. In a situation where there are many students who believe it is desirable not to volunteer to participate in class, the effect of such a climate on individual learning must be held in question.[26]

While it might be argued that the harsh atmosphere of first-year law classes is a mere precursor to the "real world" of litigious attorneys and unreceptive judges, this harsh reality might be better placed later during the law school experience of three years.[27]

Rather than improving upon the first-year experience, however, the second and third year of law school are commonly considered to be of lesser educational value. One study of legal education concluded:

> No law faculty has succeeded in revamping the second and third years to eliminate the tedium. However ingenious the efforts have been, it is still the verdict of students (and perhaps the private conviction of many if not most law teachers) that the last two years of legal education leave much to be desired.[28]

the chairman of the curriculum committee of the Association of American Law schools recently concluded:

> . . .legal education is in a crisis and...fundamental changes must be made soon. It is not only that law students over the country are reaching the point of open revolt but also that law faculties themselves, particularly the younger members, share with the students the view that legal education is too rigid, too uniform, too repetititious and too long.[29]

The result of this prevalent disenchantment with law school is that many law students spend less and less time concentrating on legal studies as they progress through the three years of law school. The author of one major study of law students and law schools put the situation in the following perspective:

> In short, the popular conception of law student life as a mixture of long hours pouring over casebooks and endless discussions of the contents of those books is more myth than reality. By the fifth semester, many students have the equivalent of a two-day work week and discuss their studies rarely, if at all. At least intellectually law school appears to be a part-time operation.[30]

First-year law students who are being introduced to law school can hardly be insulated from the dissatisfaction expressed openly by older law students and harbored privately by some members of the law school faculty. Survey evidence reveals that

> frequent contacts with upperclassmen tend to speed up the relaxation process, reduce the number of hours studied during the weeks, and reduce the frequency of informal discussions of class related material.[31]

Despite the unsatisfactory character of legal education in the eyes of many law students, first-year law students cannot cavalierly disregard the pressure to compete for grades at the end of the first year.

> Many law students believe, with some degree of truth, that one's career as a law student and possibly as a lawyer can be made or broken in the first year. Ranking in class is directly linked with career choices. . . . Law firms emphasize grades and honors in seeking recruits for summer jobs and later for regular employment.[12]

Grades earned at the end of the first-year of law school are considered the most important determinant of class rank. The author of one survey of law students noted that

> there was a pervasive belief that once the first-year grade average was obtained, there was little one could do to improve it substantially. While this may be true arithmetically, its effect psychologically seemed to be that of depressing second and third-year attempts to improve one's position.[13]

These observations suggest that the first-year law student is typically faced with strong, conflicting pressures. On the one hand, legal education is under growing criticism, both for its style and for its relevance to eventual legal practice. On the other hand, the ability to cope with the intensely competitive atmosphere of first-year classes and ultimately to perform well on the end-of-year examinations is a major determinant of the career opportunities of law students. The way in which each law student chooses to resolve this conflict will determine their approach to examinations taken at the end of the first year. The variety of approaches will affect the relative rankings of law students. Those students who react poorly to the teaching method, who consider law school to be irrelevant to legal practice, or who refuse to compete for grades are likely to do poorly on first-year examinations for reasons having nothing to do with their "legal ability."

B. Law School Examinations

The American Bar Association accreditation standards for law school establish the universal method for evaluating law student performance.

> As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as moot court, practice court, legal writing and drafting seminars and individual research projects.[14]

The standards reinforce the similarity among law school examinations which legal educators accept as the benchmarks of academic accomplishments. The similarity of the examination process allows generalizations to be made about the qualities associated with high law school grades.

The permissible generalizations involve exam writing techniques which transcend the subject matter of individual courses. One study concluded that:

> law school grades are unidimensional, that is, regardless of the nature of the course or of the teaching methodology there was no consistent difference on the relative grades of students. Thus, if student A received a better grade than student B on Property, he was also likely to receive a better grade on Torts or Constitutional Law.[35]

The similarity of law school grades earned in different courses has been observed during the first year.[36] "The reliability of the cumulative three-year law school grade-point average is .85."[37] Thus, the imperfect predictive validity of admission formulas cannot be excused because of assertions that the variety of courses and professors makes grades inherently unpredictable.

If law school grades are potentially quite predictable, the question remains whether admission prerequisites are the most important determinants of relative grades. One study found that "certain *systematic* factors, such as handwriting, were associated with the. . .grades. The most striking of these was Length."[38] The study explored the relative importance of various factors and discovered that average law school grades were predicted best "by Length and the laymen's impression of 'correctness.' There also was a low but statistically significant correlation between Handwriting and Mean Grade."[39] Since the length of answers cannot be known during the admissions process, and since handwriting is unrelated to legal ability, one is tempted to argue that the appropriate determinants of law school grades are related to admission prerequisites. One such hypothesis would argue that students with high LSAT scores will learn more law and consequently write longer answers which receive better grades. Research, however, has failed to confirm this hypothesis.

> Since Length is essentially unrelated to LSAT (r=.15), one cannot dismiss its impact by saying that the intelligent student knows more and thus writes more. It just is not so![40]

A second study investigated the factors associated with the finding that longer answers received higher grades. One factor involved distinguishing between major and minor issues in the question and focusing discussion on the major issues. A second factor was discussing both sides of the issue. Together these two factors provided approximately the same predictive power as a combination of length and LSAT scores.[41]

The importance of discussing both sides of each issue has been recognized as important to superior law school grades. The student who is seeking the "right" answer may receive lower grades.[42] Such a student may correctly perceive the "right" answer, but nonetheless receive a lower grade than other students who fail to resolve the question presented, but merely recognize that there are several sides to the problem. This suggests the possibility that students receiving the better law school grades may not necessarily be the best counselors informing clients of the best course of action or the likeliest outcome of litigation.

It does seem likely that students who do not identify strongly with one or another party in a legal question will be able to better recognize various sides to the problem. This seems consistent with the hypothesis that law students who choose a legal career without regard for the type of client to be served will also fare better on law school examinations. Conversely, a student who chose a legal career because of a particular concern for a certain type of client or a certain cause, such as protecting the environment, will be hurt in the grading process because of this purposeful commitment to the study of law. Finally, students who pursue a law degree in order to enhance other career opportunities and are therefore more interested in learning the "black letter law" related to their careers will be less prone to looking for both sides of the issue and less likely to earn high grades.[43]

The importance of seeing at least two sides to every legal problem stands in marked contrast with the importance during the LSAT of selecting the "best" answer to multiple-choice questions. This is particularly true with respect to the Principles and Cases section of the LSAT, which is included in the test because of its "face validity." (See§IV-D-3.) It is possible that some candidates are scoring poorly on the LSAT because they possess too much of the ability prized during law school—the ability to see more than one answer. This divergence between law school skills and multiple-question test-taking skills has been highlighted in an informal review of answer sheets prepared by law professors to a publicly released form of the Multistate Bar Examination (MBE). The faculty of four bar review courses prepared answer sheets to the 200 question test because the answers had not been released with the test.

> When the answer sheets of four bar review faculties. . .were compared, the law professors were found to differ on the correct answers to sixty-nine questions, or nearly thirty-five percent of the MBE.[44]

The final aspect of the fact that writing long answers discussing both sides of major issues results in higher law school grades is that law students are not necessarily told this. Research indicating the factors associated with good law school grades has been published,[45] but this academic literature is less familiar to law students than the claim of ETS that "studies show that the LSAT scores help to predict which students will do well in law school."[46] Some students admitted to law school with low LSAT scores may consider these scores to be accurate indicators of their likely performance in law school and despair of ever excelling in law school. If these students were aware that excellent grades could be earned by writing appropriate answers to law school examinations regardless of their LSAT scores, the incentive to excel might be reinstated and the self-fulfilling nature of LSAT scores reduced. As the present state of the information available to law students suggests, however, students with low LSAT scores are subtly discouraged from trying to beat the odds.

C. Minority Student Reactions to Law School

The preceding description of the first year of law school and of the law school examination process is appropriate for all law students, regardless of their racial or cultural background. Until recently, law schools had been the almost-exclusive preserve of white males. Thus, the criticisms leveled against the educational environment of law school have been the product of reactions by those students considered to be among the favored group during the admissions process.

This report is concerned with the special situation in which previously excluded groups find themselves during law school. The general criticisms of law school will not be lost on these recent entrants to the law school community. Instead, additional factors are likely to affect minority law students during the first year of law school and during the law school examination process. Insofar as this combination of general and specific criticisms of law school affects the performance of minority law students in ways that do not reflect on their ultimate abilities as practicing attorneys, these factors are indications that the criterion of performance on first-year law examinations is in inappropriate one against which to measure the fairness of admissions policies.

1. *The Law School Environment*

It is difficult to discuss the law school environment experienced by minority students without remembering that minority students are only recent additions to the law school population and their continued presence is coming under increasing attack. Thus, the performance of individual law students from minority groups cannot be divorced from the general controversy over minority admissions to law school.

This controversy imposes at least two strong, although contradictory, pressures on the typical minority student. First, a minority student's performance in law school is often judged as characteristic of the performance which future minority applicants would produce.

> As black law students they are aware that their individual performances are doubly important in that they are watched, monitored, analyzed and translated into statistical arguments for or against the future admission of minority students.[47]

On the other hand, the pressures placed on minority students to continue the enrollment of minority applicants make full-time devotion to legal studies an unavailable luxury. One black law professor has noted:

> in many law schools, black law students are forced, individually and as an organized group, to assume the role of quasi-administrators, to

> undertake extensive and time-consuming duties in recruitment, admissions, financial aid and placement.[48]

Thus, because the status of minority students in law school remains uncertain and subject to change, minority students feel pressure as a group to do well in law school, but must assume obligations which make excellence harder to achieve.

Those students who feel pressure to excel in law school in order to justify future admission of minority candidates may not be reinforced in their urge to obtain high grades. Apart from the "normal" pressures which a fiercely competitive first-year law school experience impose on all law students, minority law students must endure the contemporary manifestations of age-old competitions among racial and ethnic groups. At times it is merely the exposition of a legal system which has been used to subjugate certain groups which adversely affects the attitudes of minority students.

> Indeed, a majority of black law students are repelled early in their law school careers by the degree to which the views expressed by their teachers reflect a far from analytical allegiance to a legal system that since its inception has systematically suppressed black people. Blacks do not expect the law schools to advocate revolution. They do, however, expect a view of the world, the law, and society more encompassing than that held by Louis XIV. And in this expectation, they are often disappointed.[49]

In other instances, blatant racism is the problem which minority students must confront. Harvard Law School Professor Derrick Bell reminisces about his own experience as a black law student in the following terms:

> In addition to the pressures of adjusting to legal study, there was the necessity of keeping one's temper during property classes where...the professor would "test" black students by sprinkling his hypotheticals with "negras" whose craving for watermelon induced entrance on property not their own.[50]

While the specifics may vary, unfortunately most contemporary minority law students "feel that they have been the victims of discrimination, primarily from the attitude of their professors, the grading of exams, and subtle general discrimination."[51]

The combination of a legacy of subjugation through law and a contemporary strain of prejudice among those teaching future lawyers has made an ultimate belief in the justness of the legal order harder to maintain among contemporary minority law students. It is this basic disillusionment with the equity of the legal system which professor Bell has identified as the main difference between today's minority law student and those few who have preceded them.

> Perhaps the most appropriate point of departure in describing the differences between contemporary law students and those who were admitted to white law schools in the past is that the latter accepted the basic validity of the legal process. As one black civil rights attorney put it: ". . .during those early years, there was a universal misconception that the black man's struggle for equality would be won if the effort to destroy the constitutional basis for support of the open racism of the South succeeded." The experience of the last decade destroyed all such reassuring beliefs. True, today's youth, black or white, law student or not, understandably finds acceptance of the concept of an orderly, basically just legal system harder than ever to accept. But for the black law student, this is only the beginning.[52]

A more disturbing trend involves the assumption among many white law professors that minority students are "less qualified" than white students. This assumption is often encouraged by the description given to programs designed to increase the percentage of minority students in law school. The underlying assumption is grounded on a recognition that traditional law school admission policies would not have resulted in significant minority student enrollment. A 1976 survey of law schools confirmed this fact. "When law schools were asked to estimate the number of those minorities who would have been admitted if their minority status was unknown, they estimated reductions of 80% for blacks and 70% for Chicanos."[53] Minority law students apparently have a similar estimate of the significance of race-conscious admissions programs. "Eighty percent of minority law students feel that they were 'special admits' (admitted to their law schools under special circumstances based on race ethnicity)."[54]

The conclusion that race-conscious admissions results in a "less qualified" group of minority law students is not inevitable, as this report suggests throughout, but it is the prevalent belief among law school faculties. The chairman of the Minority Group section of the Association of American Law Schools described the consequences of assuming that minority students were "less qualified" during the first-year of law school after reviewing the results of a survey of law schools:

> Four years ago, when the Survey-team assessed the mood of the law schools toward minority students—there were no minority faculty of any statistical significance—it found: "The common thread of thought seems to suggest that most law school personnel feel that most minority-group students, when measured against the traditional criteria and credentials for and of law school admitees, are at an expected performance level below that established by the combination of LSAT scores and undergraduate grade point averages presented by most of the majority group standards. We found that this has resulted in many patronizing actions being taken on the part of many law schools. Examples of this abound in the initiation of special programs for minority students with the 'published' objective of 'raising their level of competence' rather than changing any 'basic aspect' of the law school. These schools are then 'shocked' and 'disappointed' when the minority group students did not register immediate and warm acceptance of these programs.[55]

Some white faculty members do not shrink from attempting to "prove" their preconceptions that minority students are less qualified by openly challenging these students, as a group, to perform under the onus of assumed inferiority. One law student described an all-too-common experience in law school classrooms:

> It's not a joke, it's actually a very serious thing amongst the minority students, but we talk about it openly. . .in reference to minority day, minority week, where the professor on that specific day or on that specific week will call only on minority students, and no other students in the classroom, when it comes to approaching minorities he always does it as a whole and sometimes some of their hypotheticals are sort of based on discrimination.[56]

The persistence of racial stereotypes among white law professors and students may be partially due to the way in which programs designed to admit more minority students are characterized. Often these programs are polite extensions of a rhetoric which assumes certain racial and ethnic groups are "inferior." Today this rhetoric is transformed into a defense of programs which afford "preferential" admissions to "less qualified" minority applicants.[57] It is possible that a recharacterization of race-conscious admissions as programs designed to avoid cultural bias in the LSAT, or to accommodate minority candidates with low admissions criteria because of the low predictive validity of those criteria, would also change the atmosphere which incoming minority students encounter in law school.

Regardless of how they are greeted by white faculty and students, minority students seem to do better when there are a significant number of fellow minority students in the law school. One law professor with extensive experience monitoring minority law students has concluded:

> experience has shown that when the minority student enrollment reaches a "critical mass," many . . .difficulties disappear. Student self-confidence increases, the feeling of being special or strange diminishes as black faces and Spanish names becomes more familiar around the law school.[58]

However, most law schools have not yet enrolled enough minority students to reap the advantages which group reinforcement can bestow on individual students. During 1969-70, 90 percent of all minority law students were enrolled in only 50 law schools.[59] In 1975-76, 14 percent of all minority law students were enrolled in 12 of the most elite law schools.[60] Yet, here again a paradox arises. As more minority students are admitted with the expectation that their increased presence in the student body will improve the academic atmosphere which each individual minority student experiences, they may be admitted under programs whose rhetoric effectively disparages their qualifications and makes the pursuit of academic excellence more difficult.

Regardless of the racial climate which minority students encounter in law school, many cannot escape hard economic realities which make full-time attention to legal studies, or even successful matriculation through law school, more difficult for students from economically disadvantaged backgrounds. A majority of the minority law students surveyed during 1974 came from families with annual incomes of less than $10,000.[61] Over half of the minority students surveyed had worked during law school.[62] "Forty-four percent feel that financial problems are a major factor in minority student attrition.[63] For those students able to continue law school despite economic hardship, the grades they receive must be evaluated in light of the financial pressures which impinged on their academic pursuits. Their grades are not necessarily indications of eventual legal competence and ought not to be used as justification for refusing to admit future applicants from economically disadvantaged backgrounds.

The final point to be made about the relationship between presumptions about minority students' abilities and their ultimate performance as lawyers involve the self-perception of minority law students. After surveying minority law students, the author of the survey considered:

> it is clear that most minority law students in no way view themselves in an inferior or negative manner. Indeed, minority law students in general have a very positive view of their capabilities and performance in comparison with other law students.[64]

Yet the variety of negative factors associated with the law school curriculum, academic environment and prevalent white faculty and student prejudice makes complete dedication to earning top grades during the first-year an equivocal goal for most minority law students. One black law professor has concluded:

> It should not be surprising then that today's black student, by reason of this commitment, finds it impossible either to dedicate himself entirely to his legal studies, or to consider scholastic competition with his white classmates as a valid method of proving his worth.[65]

Despite the generally high self-esteem of minority law students, the traditional law school curriculum often leaves little opportunity to apply their talents in legal areas which most interest the students. Erwin Griswold, the former dean of Harvard Law School, recognized:

> Almost inevitably our students are led to feel that it is in (business and finance) that the great work of the lawyer is to be found. By methods of teaching, by subtle and often unconscious innuendo, we indicate to our students that their future success and happiness will be found in the traditional areas of the law.[66]

In contrast, a survey of minority law students found that "Corporate or Business Law" was one of the least interesting fields of law among these students."[67] Thus, while some minority law students may have chosen a legal career because they know that the boardrooms of major corporations need to be integrated, most minority students seem to have little interest in excelling in traditional law school courses.

The most frequently chosen field of interest among surveyed minority students was "Criminal Law."[68] Yet, as indicated above,[69] criminal law is not even considered part of the basic first-year curriculum. When it is included, it often receives fewer credits and less classroom time. In contrast to the traditional emphasis on courses dealing with big business, criminal law has perenially been a lowly regarded specialty.

A recent addition to the curriculum of most law schools has become the chosen vehicle for many minority students who have rejected competition in the first-year as a method of proving their abilities, but who have retained confidence in their own abilities. Clinical law courses, in which law students are placed in ongoing legal organizations for practical experience, have gained such widespread support among law students that 75 percent of the lawyers and law students surveyed in 1976 felt these courses should be required parts of the curriculum.[70] For minority law students, these practical experiences have the added advantage of confirming the student's self-concept as the student gains skills not necessarily imparted during the traditional law school classes. One law professor with experience in observing minority students during clinical programs explains the interaction between students and curriculum in the following terms:

> Although most law students at one time or another are frustrated by the classroom experience, often the minority student feels a greater sense of frustration. As a result the minority student frequently has a greater need for a positive learning experience outside the traditional classroom. The specially admitted student with mediocre grades may often feel the need to go beyond the classroom to prove to him or herself and others that they have the ability to be an attorney in the "real world." This "real world" experience comes in the form of the clinical program.[71]

The attraction of clinical courses for minority students creates a further paradox. It might be hypothesized that students who have a practical experience during a clinical course would return to law school with increased self-confidence and a clearer desire to learn what law professors have to teach. Instead, however, survey evidence indicates that law students who take a job with a government agency or a law firm during the summer following their first year—a situation similar to a clinical course—tend to decrease their involvement in law school even more dramatically than students who have not worked at such jobs. The author of the survey offered several conclusions about why students with experience in legal jobs tend to reduce their time commitments to law school. He indicated:

> it is equally possible that "real world" experiences in the legal profession are so exciting that the "artificial world" of law school begins to become dull by comparison. Similarly, summer employment may induce students to believe that they can function adequately as lawyers without formal legal training.[72]

Thus, clinical courses may serve the purpose of improving the self-confidence and skills of minority students, but they may be accelerating a general trend to diminish efforts to achieve high grades in traditional law school classes.

Once law students from minority groups actually encounter the important law school examinations upon which so many conclusions will be based, their particular situation as "non-traditional" students may again impinge on their performance. Students admitted despite low LSAT scores may be discouraged from expecting too much from their law school examination results because they have been told that low test scores foreshadow low law school grades—even though evidence indicates that a well-written examination will compensate for low test scores. In addition, the cumulative effect of a year of prejudicial assumptions by white faculty and students may have alienated some minority students from law school to an extent which will be reflected in their grades. Finally, some students may be more interested in determining the "right" answer to examination questions than in identifying all of the possible arguments and issues arising from the fact situation. Some students may be drawn to only one side of a conflict described in a law school examination because they identify with that particular party.[73] In addition, as recognized above,[74] students who pursue a law degree as an element of another career goal are more likely to seek "black letter law" answers rather than to engage in "thinking like a lawyer" by imagining a variety of alternative issues in each fact situation. Interestingly, the most important factor in most minority law students' decision to enter law school was "the belief that the law degree would help other career plans or would increase economic opportunity."[75] Thus, the reluctance of many minority law students to fit the traditional mold of a law student may be due to their ultimate career plans rather than their ability to understand and intelligently apply legal principles to their chosen specialty area.

One element of certain law school examinations should have no place in law school and creates obvious anxiety for minority law students—culturally biased or insensitive examination questions. One glaring example, among the several which have come to the attention of the investigation staff, should suffice to indicate the problem presented for minority law students. In the fall of 1978 students in one section of Income Taxation at one law school were given a take-home examination which asked students to review the episodes in the life of Kunte Kinte in the television drama "Roots" and to examine each change in status, including the chopping off of half his foot, in terms of the Internal Revenue Code. Many students protested the examination, but the professor defended it as valid. Students incapable of completing the examination for emotional reasons were given an alternate test. Students giving political reasons for not completing the test were not given an alternative question.

This example involves bias which is evident to many, although not to the law professor who wrote this question. Other questions may involve bias which is similar to, and as subtle as, the bias which has been uncovered in sample LSAT questions discussed in Chapter IV. The overall effect may be an artifical depression of the grade horizons of minority law students that has no relationship to the ultimte ability of these students to perform as competent attorneys.[76]

D. The Bottom Half of the Class

One statistical fact endures throughout the complex interactions of predictors and criteria for success. Precisely one half of every law school class in each law school will fall into the bottom half of the class. This simple truth cannot be avoided, but the consequences attached to findings that an individual or a group are more likely to fall into the bottom half of the class have sometimes achieved significance far beyond the fair implication of the facts.

After successfully gaining admission to law school under the current competition for places, all law students have justifiable reason to be proud of their accomplishments. For many of these students, their previous academic careers have been characterized by an uninterrupted series of successes. Their college grades and rank in their undergraduate classes were often outstanding. Yet their classmates in law school also enjoyed success as an undergraduate student. The competition in law school is a competition among the winners of previous academic joustings.

For many law students who actually earn below-average grades, or who even fear that they will not earn grades that will place them at the top of their law school class, this sense of "failure" can trigger serious psychological consequences.[77] It is possible that the shock of below-average grades will be greater for students who have gained admission to the very top law schools, as measured by their applicant/acceptance ratios. Yet all law students who successfully complete their legal studies at these selective law schools can be expected to be good lawyers. Indeed, the entire admissions process is designed to assure this result. Thus, assertions that students who earn below average grades will be incompetent attorneys, or even that these students do not deserve to be in a particular law school, are completely unwarranted. The simple fact is that if these particular below-average law students were replaced in law school, other students would stand in their stead in the bottom half of the class.

All too often recently great significance has been attached to the fact that minority law students, on the average, then to earn grades that place them in the bottom half of the class. Some assert that these below-average grades are proof that minority students are "less qualified" than rejected white applicants. Yet the bottom half of all law school classes is almost certainly made up mostly of white students. If all minority students were eliminated from law school there would simply be white students earning the grades which minority students are now earning. No amount of selective admissions will ever eliminate the bottom half of the class.

1. *"Overprediction" and Below-Average Grades*

A more confusing aspect of the fact that minority law students tend to earn below average grades has been a series of findings that minority law students' grades are slightly "overpredicted" by the LSAT or by a combined formula.[78] This has led some to conclude that the LSAT is not biased against minority students.[79] This result has even prompted some to claim that tests which "overpredict" minority grades are biased in favor of minority students.[80] Yet the phenomenon of "overprediction" is merely a result of the fact that minority students tend to earn below-average grades in law school.[81]

The statistical effect can be understood by analyzing the extreme example of a completely invalid test. Such a test would give no information about future academic performance. One would have to assume that the applicant with the highest test score will achieve only average grades; so too with an applicant scoring lowest on the test. If, however, one group of students achieved below-average grades, their grades would have been "overpredicted." The recurrent finding of "overprediction" is therefore a predictable reflection of the fact that certain population subgroups achieve below-average grades.

The confusing nature of the "overprediction" artifact can be illustrated by considering a prediction process based on the roll of dice, with the added fact that the dice are loaded against black candidates so that their average roll will be below the average roll of whites. The dice would give no information about any candidate's likely performance, but so long as black students earned below average grades their grades would be "overpredicted" by the white or common regression line and two separate parallel regression lines—both perfectly horizontal—would more accurately predict the performance of members of each separate racial group. This effect is illustrated on Figure II. We would hardly label the loaded dice as biased in favor of black candidates merely because they "overpredicted" their eventual grades.

FIGURE II

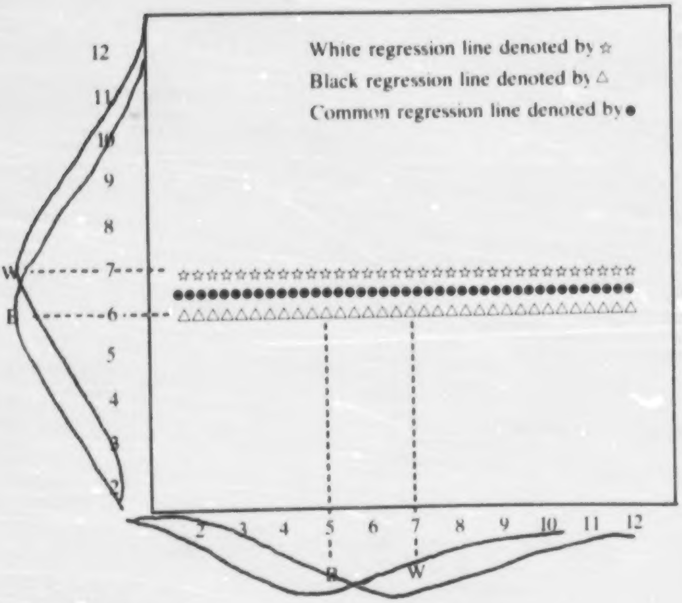
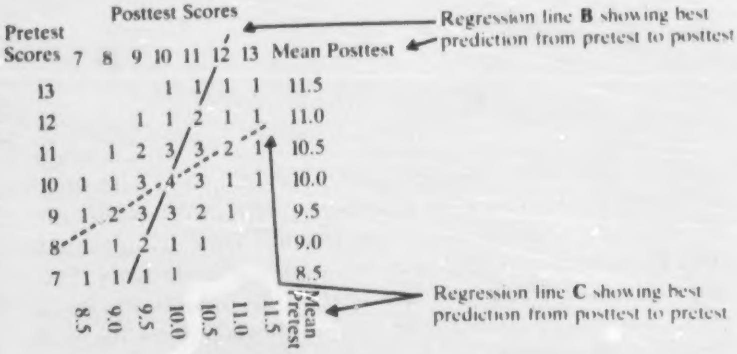


FIGURE III



Pretest Scores	7	8	9	10	11	12	13	Mean Posttest
13				1	1	1	1	11.5
12			1	1	2	1	1	11.0
11		1	2	3	3	2	1	10.5
10	1	1	3	4	3	1	1	10.0
9	1	2	3	3	2	1		9.5
8	1	1	2	1	1			9.0
7	1	1	1	1				8.5
Mean Pretest	8.5	9.0	9.5	10.0	10.5	11.0	11.5	

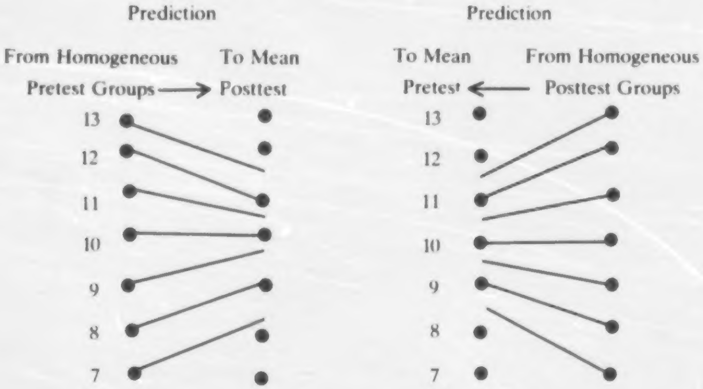
Posttest Scores

Regression line **B** showing best prediction from pretest to posttest

Regression line **C** showing best prediction from posttest to pretest

The artificial nature of "overprediction" findings can be further illustrated with a test having a .50 predictive validity for a subsequent test. Indeed, with the consciously symmetrical results displayed in Figure III, the "overprediction" result is inevitable despite the seeming fairness of the score patterns.[82]

FIGURE IV


Prediction
From Homogeneous Pretest Groups
To Mean Posttest
Prediction
To Mean Pretest
From Homogeneous Posttest Groups
13
12
11
10
9
8
7
13
12
11
10
9
8
7

In Figure IV the "regression to the mean" process is illustrated in both directions. Since the data was designed to be symmetrical, the regression effect from Pretest to Posttest is the same magnitude as the opposite time-frame from Posttest to Pretest. The finding of "overprediction" is a restatement of the regression to the mean effect when students with below average grades are compared with their predicted grades based on test scores. This effect occurs for all students, regardless of race, but are typically reported only for subgroups composed only of minority students. The impression is therefore left that "overprediction" is a particular effect attributable to the interaction of the test results with various racial groups, when in fact the same finding of "overprediction" should be expected for any group of students who actually earn below average grades.

Finally, actual data involving a comparison of sexes rather than races illustrates that students earning above-average law grades are "underpredicted" and those earning below-average law grades are "overpredicted" by a combination of UGPA and LSAT. The data are displayed in Table VII.[83]

TABLE VII
PREDICTED AND ACTUAL GRADES FOR WOMEN STUDENTS[a]

School	Predicted Average Grade[b]	Actual Average Grade	Predicted Minus Actual Grade
A	50.4	50.8	-0.4
B	49.2	47.1	2.1
C	50.1	49.7	0.4
D	49.7	51.1	-1.4
E	50.3	52.7	-2.4
F	50.0	51.7	-1.7
G	50.6	49.9	0.7
H	50.5	50.8	-0.3

[a] The predictions are based on UGPA and LSAT, using the combined group of men and women in each school.

[b] Grades were scaled to have a mean of 50 and a standard deviation of 10 for the total group of students within each school.

Since findings of "overprediction" are more properly understood as reflections of the imperfect prediction of tests or formulas rather than as evidence bearing on their racial or cultural bias of tests, it is unfortunate that this research design has been pursued so many times when the results are so predictable. It is even more unfortunate when the results of such research are used to lay to rest claims of test bias or, more shockingly, to claim instead that the test is biased in favor of a group when that group's performance is much worse on the test relative to the group's performance in school. To use these results to require higher test scores from lower-scoring minority groups in order to achieve an equal chance of admission merely adds insult to injury.

2. *"Preference" and Below-Average Grades*

It should be noted that the existence of a "preference" during the admissions process cannot be proven by the fact that a certain racial group of students earned below-average grades. Such a rule for establishing the existence of a preference would produce perverse results. For if "preferential" admissions were prohibited, with the existence of preferences identified by reference to the average grades earned by various racial and ethnic groups, then *no one* from the below-average group would be permitted admission until *most* of the group were eligible for admission because the members of that group were expected to earn above-average grades. This rule would penalize the best individuals in the below-average group because of their group membership. In addition, the average performance in college of the excluded group might be expected to drop because of the lack of apparent opportunity for admission to law school.

A related problem involves "predicting" that certain students will earn below-average grades and rejecting their applications on that basis. As this discussion has indicated, an admissions policy designed to admit only students predicted to earn above-average grades is doomed to inevitable failure in exactly one-half of the cases. Since those who withdraw from law school are often those who have high predicted grades but the wrong personality temperament which is ill-suited to law school, (See §II-C.) not even attrition rates can be necessarily reduced by placing greater weight on predicted-first-year-average during the admissions process. Instead, an admissions process which includes more factors than merely predicted-first-year-averages must be relied upon to achieve important goals being pursued by the law school and needing attention in the legal profession.

NOTES

1. Thorndike, "Concepts of Culture Fairness," 8 J. Educ. Meas. 63, 70 (1971).
2. Cf. Williams, "The Problem of Match and Mismatch in Testing Black Children," in *The Testing of Black Students: A Symposium* 17 (L. Miller ed. 1974).
3. This justification has been undercut recently with the introduction of "average" or "constant" formulas, based on the experience at most law schools, into validity study reports. See text accompanying notes 8-9 in Chapter V.
4. H. Packer & T. Ehrlich, *New Directions in Legal Education* 29 (1972).
5. *Id.* at 28.
6. Thorne, "Professional Education in Law," in *Education for the Professions of Medicine, Law, Theology, and Social Welfare* at 101, 107-8 (1972).
7. Patton, "The Student, the Situation, and Performance During the First Year of and Law Students" 59 Vir. L. Rev. 551, 637 (1973).
8. Stevens, "Law Schools and Law Students," 59 Vir. L. Rev. 551, 612 (1973).
9. Patton, The Student, the Situation, and Performance During the First Year of Law School," 21 J. Legal Educ. 10, 37 (1968).
10. *Id.*
11. *Id.* at 19.
12. *Id.* at 35.
13. *Id.* at 27.
14. Stevens, "Law Schools and Law Students," 59 Vir.L.Rev. 551, 653 (1973).
15. Boyer & Crampton, "American Legal Education: An Agenda for Research and Reform," 59 Cornell L. Rev. 221, 273 (1974) citing Stevens, "Law Schools and Law Students" 59 Vir. L. Rev. 551, 637 (1973).
16. *Id.* at 254 n. 112.
17. Patton, "The Student, the Situation, and Performance During the First Year of Law School," 21 J.Legal Educ. 10, 14 (1968).
18. *Id.* at 42.
19. Stevens, "Two Cheers for 1870: The American Law School," in *Perspectives in American History* 405, 488 (D. Fleming & B. Bailyn eds. 1971).
20. Warkov & Zelan, "The NORC Study: Lawyers in the Making," in 1(LSAC-62-3) at 229, 235 (1962).
21. York & Hale, "Too Many Lawyers? The Legal Services Industry: Its Structure and Outlook," 26 J. Legal Educ. 1, 6 (1973).

22. See text accompanying notes 2-10 in Chapter II.

23. Miller, "A follow-up Study of Personality Factors as Predictors of Law Student Performance," in 1(LSAC-67-2) at 404, 419 (1967).

24. Miller, "Personality Differences and Student Survival in Law School," in 1(LSAC-65-1) at 299, 309 (1965).

25. *Id.*

26. Patton, "The Student, the Situation, and Performance During the First Year of Law School," 21 J. Legal Educ. 10, 38 (1968).

27. Id. at 38-39.

28. H. Packer & T. Ehrlich, *New Directions in Legal Education* 32 (1972).

29. Thorne, "Professional Education in Law," in *Education for the Professions of Medicine, Law, Theology, and Social Welfare* 101 (1972) citing Meyers, "Report of the Chairman of the A.A.L.S. Committee on Curriculum," in Proceedings, A.A.L.S. 1968 Annual Meeting, part 1.

30. Stevens, "Law Schools and Law Students," 59 Vir.L.Rev. 551, 653 (1973).

31. Id. at 657.

32. Thorne, "Professional Education in Law," in *Education for the Professions of Medicine, Law, Theology, and Social Welfare* 101, 156 (1968).

33. Patton, "The Student, the Situation, and Performance During the First Year of Law School," 21 J.Legal Educ. 10, 50 (1968).

34. Note, "ABA Approval of Law Schools: Standards, Procedures, and the Future of Legal Eduction," 72 Mich.L.Rev. 1134, 1145 n. 63 (1974).

35. Boldt, "Factor Analysis of Law School Grades," in 2(LSAC-73-1) at 333, 334 (1973); Klein & Hart, "Chance and Systematic Factors Affecting Essay Grades," in 1(LSAC-68-3) at 511, 516 (1968).

36. Hearing Before the Special Subcomm. on Educ. of the House Comm. on Educ. and Labor, 93d Congress, 2d Sess. 411 (testimony of F. Hart).

37. Carlson & Werts, "Relationships Among Law School Predictors, Law School Performance, and Bar Examination Results," in 3(LSAC-76-1) at 211, 220 (1976).

38. Klein & Hart, "Chance and Systematic Factors Affecting Essay Grades," in 1(LSAC-68-3) at 511, 520 (1968).

39. *Id.* at 519.

40. *Id.* at 520

41. Linn, Klein & Hart, "The Nature and Correlates of Law School Essay Grades," 32 Educ. & Psych. Meas. 267, 276 (1972). It should be recalled that the "layman's impressions of 'correctness' produced a higher correlation coefficient than did LSAT scores." Compare note 39 *supra*.

42. Patton, "The Student, the Situation, and Performance During the First Year of Law School," 21 J. Legal Educ. 10,47 (1968).

43. *Id.* at 45.

44. A. Nairn, et al., *The Reign of ETS: The Corporation That Makes Up Minds* 140 (1980). "There were five questions on which the four faculties arrived at three different correct answers. On two questions, they chose four different answers, each faculty selecting a different multiple-choice option." *Id.* at * .

45. Linn, Klein, & Hart, "The Nature and Correlates of Law School Essay Grades," 32 Educ. & Psych. Meas. 267, 276 (1972).

46. Law School Admission Council *Law School Admission Bulletin and LSAT Preparation Material* 17 (1979).

47. Smith, "Double Exposure: The Sinister Magic That Would Turn Black Students into White Lawyers," 2 Learning and the Law 24, 28 (1975).

48. *Id*, at 28.

49. Bell, "Black Students in White Law Schools: The Ordeal and the Opportunity," 1970 Toledo L. Rev. 539, 548 (1970).

50. *Id.* at 545. See §IV-D-4-a for an example of a similar inflammatory question in the sample LSAT.

51. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 The Black Law Journal 527, 530 (1975).

52. Bell, "Black Students in White Law Schools: The Ordeal and the Opportunity," 1970 Toledo L. Rev. 539, 546 (1970).

53. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 567 (1977).

54. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," in 4 The Black Law Journal 527, 529 (1975).

55. Leonard, "Chairman's Annual Report on Minority Groups Association of American Law Schools," 4 The Black Law Journal 562, 568 (1975).

56. Colorado Advisory Committee to the United States Commission on Civil Rights, *Access to the Legal Profession in Colorado by Minorities and Women* 24-25 (1976).

57. Leonard, "DeFunis v. Odegaard: An Invitation to Look Backward," 3 The Black Law Journal 224, 225 (1973).

58. O'Neil, "Preferential Admissions: Equalizing Access to Legal Education," 1970 Toledo L. Rev. 281, 313 (1970).

59. Bell, "In Defense of Minority Admissions Programs: A Response to Professor Graglia," 3 The Black Law Journal 214 (1973) citing AALS Report, "The Law Schools and the Minority Group Law Students," (1970).

60. Evans, "Applications and Admissions to ABA-Accredited Law Schools: An Analysis of National Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 625 (1977).

61. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 The Black Law Journal 527, 528 (1975).

62. *Id.* at 530.

63. *Id.*

64. *Id.* at 541.

65. Bell, "Black Students in White Law Schools: The Ordeal and the Opportunity," 1970 Toledo L.Rev. 539, 547 (1970).

66. Griswold, "Intellect and Spirit," in *The Path of the Law from 1967* at 151 (A. Sutherland, ed. 1968) cited in Thorne, "Professional Education in Law," in *Education for the Professions of Medicine, Law, Theology, and Social Welfare* at 101, 123 (1972).

67. Several readers have expressed surprise at this survey result, suggesting the possibility that a shift has occurred in the proportions of black law students preferring various types of practice from 1974 to 1979. It is possible that the LSAT is contributing to any shift that may have occurred, since 29 percent of the questions in the *Bulletin* are business-related. Insofar as the LSAT is exercising a powerful but unacknowledged influence on the career choices of those black applicants actually accepted to law school, important aspects of the need for minority attorneys will go unmet despite the enrollment of some minority law students. See Boyd "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 The Black Law Journal 527, 528 (1975) for survey results.

68. *Id.* There remains the possibility that some minority law students are channelled into criminal law practice because of a lack of job opportunities in other fields of law. This does not diminish the contribution of lawyers practicing in this area, but it should not be used to excuse the failure to hire minority lawyers in other specialties as well.

69. See note 5 *supra.*

70. Project 76, "What You Think About the Profession," 6 Juris Doctor 28, 29 (1976).

71. Rappaport, "The Legal Educational Opportunity Program at UCLA: Eight Years of Experience," 4 The Black Law Journal 506, 514 (1975).

72. Stevens, "Law Schools and Law Students," 59 Vir. L. Rev. 551, 658 (1973).

73. See §IV-D-4-e for an example of a question in which identification with one or another party in the scene can affect one's conclusions about the legal consequences of a fact situation.

74. See note 43 *supra.*

75. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 The Black Law Journal 527, 528 (1975).

76. For a discussion of the unconscious bias found in law school examinations, see Smith, "Double Exposure: The Sinister Magic that Would Turn Black Students into White Lawyers," 2 Learning and the Law 24 (1975). The National Conference of Black Lawyers has established a Commission of Inquiry to ascertain the extent of such biased examinations and grading practices in the nation's law schools as a response to a growing number of complaints alleging such problems. See letter of Denise S. Carty-Bennia reproduced in Appendix C to this Report.

77. Cf. Stone, "Legal Education on the Couch," 85 Harv. L.Rev. 392 (1971); "Anxiety and the First Semester of Law School," 1968 Wis.L.Rev. 1201 (1968).

78. See Linn, "Test Bias and the Prediction of Grades in Law School," 27 J. Legal Educ. 293, 313 (1975) for a review of these studies.

79. See, for example, Brief for the Association of American Law Schools as Amicus Curiae at 13, *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

80. A. Jensen, *Bias in Mental Testing* 515 (1980).

81. University of Califonia, *Final Report of the Task Force on Graduate and Professional Admissions* 43 (1977).

82. Figures III and IV are adapted from D. Campbell & J. Stanley, *Experimental and Quasi-Experimental Designs for Research* 10 (1963). Copyright (c) 1966 by Rand McNally & Co. Used by permission of Houghton Mifflin Company. I am grateful to Marsha Hirano-Nakanishi for bringing this evidence to my attention.

83. Linn, "Test Bias and the Prediction of Grades in Law School," 27 J.Legal Educ. 293, 316 (1975) (table 5).

VII. Race-Conscious Evaluation of Admissions Prerequisites

This report has discussed the consequences of conducting admissions programs to law school without including the racial and ethnic background of candidates in the evaluation of admission prerequisites. A wide variety of evidence suggests that minority candidates will be unfairly handicapped in their legitimate admission opportunities by a race-blind admissions process. This chapter will review a variety of adjustments which could be made in the evaluation process to remove unfairness against minority applicants. As will become evident in this chapter, there is considerable latitude available to individual law schools in devising adjustments in the traditional evaluation process and even in formulating a coherent definition of "fairness" in the admissions process. No single evaluation process or definition of fairness can command paramount legitimacy. Whatever choice is eventually made by an individual school, it must be made wth the recognition that another choice was possible. This chapter will merely describe various options and suggest the background information which would support each option's selection by a particular law school.

A. Adjusting the Admission Index of Minority Applicants

As indicated earlier (see §I-A) Admission Indices which combine LSAT scores and UGPA into a single number are currently used by most law schools. These Indices apparently have their greatest impact during the admissions process at the point when they are used to divide the applicant pool into subgroups, with one subgroup designated as "presumptive admit," another as "hold" and a third as "presumptive denial." In some law schools, only the middle group of applicants receives individual attention by members of the admissions committee, those in the top and bottom category are automatically accepted or rejected on the basis of their Index numbers.

The typical procedure of dividing the applicant pool on the basis of an Index number is a reaction to the widely-discussed deluge of applicants which many law schools must accommodate. Yet, at the same time, making significant decisions on the basis of a single Index number is a policy fraught with potential error. When it is recognized that any Index which combines LSAT and UGPA will have a significant adverse impact on the admission opportunities of minority applicants, the question arises whether there is a principled basis for adjusting Index numbers after recognizing the racial or ethnic background of the applicant.

An adjustment of all minority applicants' Index numbers would be justified by the joint recognition that the Index has a low predictive validity and that their lower average Indices are a reflection of prior societal discrimination against certain minority groups. Mr. Justice Powell rejected the general justification of race-conscious admissions programs as remedies for past societal discrimination: such discrimination is "an amorphous concept of injury that may be ageless in its reach into the past."[1] This section, however, seeks to establish a principled basis for limiting Index adjustments so that no plausible charge can be brought that minority group applicants are being given the benefit of adjustments which exceed those which would be justified on the basis of past societal discrimination. Two major adjustments models have been published which meet these criteria.

1. *The Thorndike Model*

Robert L. Thorndike published the first widely discussed model for adjusting admissions criteria for minority group applicants.[2] He suggests that "the qualifying scores on a test should be set at levels that will qualify applicants in the two groups in proportion to the fraction of the two groups reaching a specified level of criterion performance."[3] Since the typical criterion used in law school validity studies is first year grades, a law school could establish a particular law school average which it considered indicative of a student's "success" or "failure" in law school. This may not be the same grade as the established "passing" grade at the law school.

One way of understanding the Thorndike model is to recall the hypothetical perfect admissions process (see§II-A) in which the imperfect predictive powers of admissions criteria was avoided. A similar goal is involved in the Thorndike model, in which various groups are affected by the low predictive validity of admissions criteria. The model demands: "Select as many members of each group as would have been chosen if performance could be observed at time of selection."[4]

To use Thorndike's adjustment procedure, a law school would select the particular law school average, determine the percentage of minority students who have met or exceeded that standard in the past, and also determine the percentage of white students meeting or exceeding that standard. Admissions criteria should be used to admit applicants to a particular subgroup according to the proportion of the two percentages. If fifty percent of the minority students have succeeded and eighty percent of the white students have succeeded, then the acceptance rate for minority applicants should be at least five-eighths of the acceptance rate for white students. If two-fifths of all white applicants will be accepted, for example, then at least two-eighths of all minority candidates must be accepted to use the selection criteria fairly under Thorndike's model.

To apply the model to the slightly different problem of dividing the applicant pool into three subgroups, modifications can be introduced. To divide applicants into a "presumptive admit" and a "hold" category, a law school grade corresponding to the dividing line between the two categories must be selected, the proportion of minority and white applicants previously exceeding that line must be determined, and an appropriate adjustment of the proportion of applicants placed in the "presumptive admit" category should be made to equalize the likelihood of selection given previous success of members from the same racial or ethnic group. To divide applicants into a "hold" and "presumptive deny" category, a similar process should be followed by establishing a second dividing line based on law school grades and calculating the proportion of applicants from each racial or ethnic group to be placed into the "hold" category.

It should be noted that the percentages of each racial or ethnic group placed in different applicant subgroups may differ, as may the relationship among racial or ethnic group percentages when the two dividing lines are compared. This is because the proportion of applicants from each racial or ethnic group placed in each applicant subgroup will depend upon the actual performance of members from that group in law school during previous years. Since there is no reason to assume that the proportion of students falling in each category of law school grades will be comparable, the proportion placed in each applicant subgroup will vary accordingly.

2. *The Cole Model*

Nancy S. Cole has developed a second widely discussed model for adjusting admission prerequisites from various racial or ethnic groups. Her model is similar to Thorndike's, but diverges even farther from the results what would follow from simple adherence to admissions criteria.[5] She suggests "that for both minority and majority groups whose members can achieve a satisfactory criterion score. . .there should be the same probability of selection regardless of group membership."[6] Since a large number of applicants compete for limited spaces based on admissions criteria with imperfect predictive validity, some students are selected who ultimately perform below a chosen standard; others are rejected who could have exceeded that standard if selected. Cole requires that the probability of being selected if succesful be independent of group membership.

As with all admissions formulas, previous performance is used to choose current admissions policies. If selection standards are set so that eighty percent of the successful students of one group would be placed in a particular applicant subgroup, but only fifty percent of the successful students from another group placed in that subgroup, the selection criteria should be adjusted until eighty percent of the second group would have been placed in that particular subgroup.

Cole argues for her conditional probability model as follows:

> In many situations the rights of potentially successful applicants to fairness should be of primary concern. Under the conditional probability model such applicants are guaranteed equal chances of selection regardless of group membership. This procedure places

the burden of improving selection on the selecting institution and even allows for the use of differential predictors in different groups. If a test tends to work poorly in predicting criterion scores for minority members, under the conditional probability model the selecting instituion must compensate for the poor predictors by selecting more, not fewer, minority students.[7]

3. *Practical Implications of Thorndike and Cole Models*

Cole argues for equal chance of selection given success; Thorndike argues for equal chance of success given selection. Cole's standard is usually more favorable to minority students than Thorndike's, while both standards typically produce more minority admissions than would strict adherence to admissions criteria. The definitions diverge as the average score gap between the two groups on the preadmissions variable increases, and as predictive validity decreases.[8] For a variable such as college grades or standardized test scores, then, on which one racial group scores considerably below another group, very few members of the lower scoring group will be selected on the basis of that variable, whereas a much larger proportion of the lower scoring group should be selected based, for example, on their ultimate ability to perform well in school.

The practical benefits flowing from resort to the Thorndike or Cole model are significant. For example, at fifteen of sixteen colleges, an application of Thorndike's model would result in the admission of more minority students than would be admitted under strict adherence to scores on the Scholastic Aptitude Test (SAT). At one of these colleges, less than eight percent of the minority applicants would have been accepted on the basis of SAT scores. Using Thorndike's adjustment for actual college performance, however, results in over forty-two percent being accepted.[9]

The *DeFunis* case[10] prompted a study which produced similar results when applied to law school admissions. The study applied reasonable assumptions to an admissions process modeled after that of the University of Washington School of Law. With no adjustment for race, a minimum of none and maximum of one minority student would have been selected on the basis of predicted grades derived from a combination of college grades and scores on the LSAT. Applying Thorndike's model, a minimum of four and a maximum of eleven students from the minority group would have been selected. Applying Cole's model, a minimum of eight and a maximum of eleven students from the minority group would have been selected.

4. *Criticisms of Thorndike and Cole Models*

As empirically derived standards, Thorndike's and Cole's models offer the advantage of reducing the need for adjustments of admissions criteria as the number of qualified minority applicants increases,[11] as the performance of minority students admitted to college or professional schools improves,[12] and as cultural bias in standardized tests is eliminated. Of course, future professional performance, not future academic success, may be the best benchmark for evaluating the fairness and appropriateness of an admissions program. Then the validity of current admissions criteria likely decreases, and the need to employ a Thorndike- or Cole-type model to adjust for this invalidity increases.

Several criticisms have nonetheless been leveled against these models. Both models are too broadly applicable, according to one criticism. They both depend on admissions criteria of imperfect validity applied to a group of students scoring below average on those prerequisites. Thus, they could be invoked to improve the admissions chances for any group of students, even if that group has suffered no history of discrimination.[13] However, prior societal discrimination would provide a ready justification for making pragmatic limitations. The Thorndike and Cole approach could be limited to minority groups who have suffered prior discrimination. Thus, the "overbroad" criticism should not be allowed to hamper the limited efforts educational institutions can make to assist those with the greatest claim to fairness.[14]

A somewhat different criticism involves the claim that some groups benefiting from affirmative action will actually lose under the Thorndike model. This would occur if a minority group scored *above* the white majority on admission prerequisites and on school grades. It has been claimed without evidence, that this would be the case for Japanese-Americans.[15] However, the evidence produced in the Gannon study included in this volume indicates that Japanese Americans with UGPAs equal to those of whites graduating from the same college earn LSAT scores that are actually below those of the white students. Thus, the undocumented assertion that these students would be harmed by the Thorndike model remains to be explored. In no case should any manipulation of the admissions process be used to harm a particular subgroup of the population. While those previously benefiting from "traditional" admissions procedures will have their advantages eroded as the procedures are adjusted, this general result should be shared by all those affected. No particular subgroup should bear an unfair burden.

Thorndike and Cole have also been criticized as not suggesting the same outcome, when only grades and test scores are evaluated, if the goal is to reject the unsuccessful instead of selecting the successful.[16] This criticism is inapposite in a situation such as that in law school admissions, where all accepted students from both majority and minority groups are considered fully qualified.[17] Indeed, every law school claims to have rejected applicants considered to be fully qualified to study law. Here the concern is with selecting the "best qualified." Even when the issue is determining those applicants to be placed in the "hold" category, the concern ought to be in avoiding errors resulting from placing applicants into the "presumptive deny" category unnecessarily. Such a placement is the probable forerunner to outright rejection and an error in that placement would constitute a decision to avoid even scrutinizing an applicant's file when that applicant could, in fact, have successfully completed law school if eventually admitted. The very purpose of the "hold" category should involve erroneously placing candidates who will eventually be rejected into the category. This will afford admissions officials an opportunity to intelligently make a rejection decision.

A more direct response to this criticism combines the definition of "acceptable" performance in law school with a realistic view of the admissions process. Since all law schools are rejecting some who are fully qualified to study law, the definition of "acceptable" performance is regulated by the supply of applicants and available places in the first year class. If an admissions official were therefore to define "acceptable" as that level of performance which would admit only enough applicants to fill the class, the paradox whereby the goals of accepting the successful and rejecting the unsuccessful are incompatible actually disappears.[18] As long as a definition of "acceptable" performance is set so that a surplus of accepted students does not result, the paradox does not arise. The Thorndike model then requires that different groups be treated so that they are not harmed by the imperfect predictive validity of admissions prerequisites.

The models have been criticized because they "will not yield the degree of increased selection of disadvantaged persons thought desireable in some situations."[19] This criticism stems from hypothetical simulations compared with actual admissions at the University of Washington School of Law during the pendancy of the *DeFunis* case.[20] Thus, the models can be expected to unequivocably increase minority admissions opportunities at schools without the affirmative action programs comparable to the University of Washington's. On the other hand, 31 law schools account for 53% of the minority law students.[21] For these schools, it is possible that the models will not completely justify the scope of their previous successes. Only detailed examination of these particular schools can answer this possibility. If it were the case that a particular law school exceeded the minority admissions which these models require, there are additional models included in this Report which go beyond the suggestions of Thorndike and Cole.

In general, however, the decisions of each law school need not be measured against a national standard. In other words, not all schools need to follow the same plans for the same reasons. Schools with greater success in minority admissions need not be reprimanded for their unusual success. There needs to be a place for schools which are able to achieve a favorable atmosphere for minority law students and perhaps gain a reputation as a school particularly attractive for such students. Indeed, it is more than ironic that Martin Luther

King, Jr. School of Law is now under a permanent injunction against considering the race of applicants during the admissions process pending the appeal now before the California Supreme Court.[22] Only when all law schools can be congratulated for doing their share in integrating the profession should questions be raised that some schools are doing more than their share.

A final criticism may possibly be leveled at the Thorndike and Cole models. Since the models fail to determine the extent of the current effects of past discrimination on minority students' academic achievement, excessive adjustments might be made in preadmissions criteria that were not limited to compensating for societal discrimination. But Thorndike and Cole depend on the academic performance in the selecting law school of previously admitted minority students whose own performance is also likely to have been adversely affected by past discrimination; thus, neither model will completely compensate for that past discrimination. The compensation afforded by these models will fall far short of excessive.

B. Adjusting the LSAT Scores of Minority Applicants

The preceding discussion of the Thorndike and Cole adjustment models can apply equally to adjustments of UGPA, LSAT or Admission Index numbers. All that is necessary to invoke their application is a recognition that their predictive validity are low and that the minority applicants' apparent qualifications are deflated by the lingering effects of societal discrimination.

Some schools may choose not to use these models for a variety of reasons. Among them would be schools which have not had sufficient prior enrollment of minority law students upon which to base adjustments. For those schools, the initial acceptance of the first few minority applicants will have to proceed without the benefit of these models. Other schools may be reluctant to limit the adjustments to prior performance of minority law students because they fear that the uncomfortable atmosphere which the first cohorts of minority students experienced may have depressed their grades. For those schools, basing future minority admissions on past minority performance would only perpetuate the prejudicial stereotypes which had already deflated the grades of previous minority students.

Finally, some schools may conclude that both UGPA and LSAT scores of minority applicants should be adjusted because they have low predictive ability and the lower average indicators among minority applicants is undoubtedly due to the lingering effects of past discrimination. Yet these schools may also conclude that cultural bias in the LSAT means that test scores need to be adjusted to a greater extent than UGPA. Indeed, some schools may decide not to adjust UGPA according to either the Thorndike or Cole model, but nonetheless decide to adjust LSAT scores because of identifiable cultural bias on the test.

Whatever their stated rationale, many schools appear to be placing less weight on test scores in evaluating minority applicants. In a survey of admission practices among colleges, graduate and professional schools "the major shift in dealing with minority applications is away from heavy reliance upon test scores, but not away from grades and the same admission requirements."[23] This Report is intended to provide sound rationales for this already prevalent practice of deemphasizing test scores and to provide benchmarks against which the adjustments can be measured.

1. *Counting the Number of Biased Questions*

It might seem attractive to attempt to adjust scores on the basis of the number of identifiable biased questions on the LSAT. Yet this solution is neither practical nor necessarily attractive. It is not practical because the reported scores from different forms of the LSAT are "equated" to account for differences in the difficulty of different forms. A given number of right answers will translate into a different reported score on various forms.[24] Thus, a given number of biased questions will affect the reported scores on various forms differently.

This solution is not necessarily attractive because it ignores important elements of the biasing process. The general reputation of the LSAT among minority candidates can affect individual student's attitudes and ultimate performance during the actual testing situation. The speed with which the test must be completed can cause candidates to skim questions, or to deliberate but not finish the test. Finally, the presence of questions, sentences or reading passages which increase the anxiety level or decrease the concentration of minority candidates can deflate total LSAT scores beyond any effects directly traceable to wrong answers on a particular question. Thus, rather than suggesting a method for fine-tuning the adjustments for cultural bias, counting the number of biased questions underestimates the effects of cultural bias on total test scores and produces adjustments which vary from one form of the LSAT to another.

2. *Adjusting LSAT Scores on the Basis of College Grades*

Schools may wish to adjust the LSAT scores of all minority applicants until there is a national pattern of results to indicate that earning a particular UGPA or a particular LSAT score is equally difficult for members of various cultural groups. For example, using the data in Table II in Chapter III, it is possible to identify particular UGPA and LSAT levels which are equally difficult for white candidates to achieve. In particular, the reader will notice that 40 percent of the white and unidentified applicants to law school in 1976 earned UGPAs of 3.25 or above. Similarly, 37 percent earned LSAT scores of 600 or above. In contrast, 13 percent of the black applicants had UGPAs at or above 3.25; whereas only 3 percent had LSAT scores above 600. The scores of the entire black applicant pool could be adjusted upwards until 13 percent of the black applicants had LSAT scores at or above 600. Schools might choose a different UGPA as the benchmark for analysis;[25] and some may argue that the adjustments ought not to be linear, but the general concept of making grades or test scores equally difficult to earn regardless of group membership is a rationale which can support adjustments schemes similar to the one outlined here.

Some schools may wish to further refine such an adjustment scheme on the basis of experience at their own institutions. For example, if there are particular undergraduate institutions which annually supply a considerable number of applicants to a single law school, with a reasonable representation of minority applicants from that college, the law school may wish to compare the UGPAs and LSAT scores of applicants from the same college with different cultural backgrounds. If the evidence reveals that applicants from the same college with different cultural backgrounds earn widely disparate LSAT scores despite having similar UGPAs, the law school may wish to add a certain number of points to the LSAT scores of minority applicants from all colleges on the assumption that the experience of students form a few colleges with similar UGPAs is a reasonable benchmark for measuring the bias of the LSAT. The adjustments would add points to the LSAT scores of all minority applicants until the score gap between applicants from the same college with similar UGPAs was eliminated. The investigation has requested information about the four largest feeder-schools from individual law schools.[25] The information received from cooperating law schools is being analyzed by the investigation staff to see if any patterns emerge in averge score gaps among various cultural groups. (See Gannon study.)

In both of these suggested adjustment models, one based on national data, the second based on data from individual feeder-schools to individual law schools, the benchmark for adjustment is the already-known information about UGPAs among applicants. The two most important prerequisites to law school admission are adjusted until they present equal barriers to all cultural groups. Such an adjustment rationale avoids the pitfalls of adjusting test scores on the basis of regression equations designed to predict first year law school grades. The problems associated with developing adequate prediction formulas have already been elaborated in Chapter V. Precise adjustments in LSAT scores based on such formulas cannot pretend to avoid these general problems with prediction equations. Indeed, some adjustments based on regression equations would actually require minority applicants to earn higher LSAT scores than white applicants in order to earn an equal opportunity for admission.[26]

C. Evaluating LSAT Scores While Reviewing Individual Applicant Files

Thus far, this chapter has discussed the role of LSAT scores in dividing the applicant pool into subgroups. Once those groups are designated, individual scrutiny of application files is conducted by the director of admissions and members of the admissions committee. The personal evaluation serves a different function than the previous mechanical division of the applicant pool into subgroups. The original division was justified as an impersonal mechanical process because of the large number of applicants. The subsequent evaluation of individual files is conducted after a manageable number of files has been placed in a particular category. Thus, the individual evaluation of files occurs after the problem of too many applicants is reduced by the original categorization of applicants into subgroups.

Two quite different conclusions might be reached about the value of LSAT scores during the personal evaluation of files. On the one hand, some schools may decide that all applicants placed within a single subgroup are essentially equal on the basis of their numerical indicators. These schools would claim that other factors will form the basis for an acceptance/rejection decision. It would be reasonable for these schools to delete information about LSAT scores and Admission Indices from the application files during the evaluation process. It might also be sensible to delete UGPA, but evaluators will doubtless be interested in carefully reviewing transcript information which included the grades earned in individual courses and the trend in grades over the four-year college experience. The LSAT scores of candidates will not provide comparable information about the candidate's undergraduate experience. Thus, files could be reviewed in a meaningful manner without information reflecting LSAT scores. This process would avoid the need to adjust LSAT scores during the evaluation process. It would also make the claim of the school that other factors were determining the admissions/rejection decision appear to be accurate.

On the other hand, some schools may conclude that the LSAT is a trigger for further inquiry into an applicant's file. This will be particularly true for those applicants with discrepant predictors. Admission officials will be prompted to explain the discrepancy between the applicants UGPA and

LSAT score on the basis of additional information in the file. Ideally, the LSAT scores would be valuable here, not for their absolute scores, or even for their relationship with other scores of other applicants, but for their ability to prompt careful review of an applicant's file. It is not clear which piece of information in the file will govern decisions. It is possible that a low LSAT score will cast doubt on a high grade, or vice versa. No absolute rules can be established. What is important to realize is that each applicant is being evaluated as an individual at this point. The relative ranking of applicants on particular indicators is less important than the overall picture of the applicant which the various indicators portray. Thus, whether or not LSAT scores of minority applicants have been adjusted will not be as crucial at this stage, if one can be confident that decisions will be based on individual review of files rather than on a further comparison of relative scores on the LSAT.

D. Separate Evaluations of Minority and Majority Applicants

Once the admissions process has reached the stage at which individual files are reviewed, the type of information reviewed will affect the type of review conducted. There may be many factors, such as a commitment to serve disadvantaged communities, which will be important to the law school's mission but require a detailed review of the applicant's file to verify the sincerity of the commitment. In other cases, leadership qualities will be sought, but the character of previous leadership activities must be evaluated. Finally, a school may give candidates an opportunity to appear during a personal interview to improve the admissions process.

Whenever sensitive personal information is considered during the admissions process, there is a concern that the information be accurate and that its consideration be free from any potential taint of bias. It would be reasonable for law schools to conclude that the best way to insure both of the goals is to assign the responsibility of reviewing files of applicants from certain racial groups to individuals who are themselves members of the same racial groups. This assignment will reflect the recognition that the best information will be elicited during such a review/interview process. It will not indicate that members of certain racial groups are being given a "preference" during the admissions process. Instead, it will reflect the fact that the majority of white applicants have traditionally enjoyed the review of their files by white officials who can understand their backgrounds, their accomplishments, and can conduct informative interviews with the white applicants. Minority candidates will be afforded the same benefit when members of their own population subgroup conduct the review of files.

It should be noted that this opportunity to maintain separate admissions subcommittees does not fly in the face of *Bakke*, which the popular press has characterized as outlawing "quotas." This is because the rationale for the separate reviewing bodies involves a quest for the best information with which to select the best law students. It does not arise from a need to afford certain groups a "preference" in the admissions process. Instead, since subjective information will be included in the admissions process, those best able to exercise informed judgments about candidates will be given the opportunity.

E. Disregard of LSAT Scores

There may be those who will conclude that the LSAT creates more confusion than it eliminates. While the original rationale of the LSAT was to put applicants from a variety of backgrounds on a common footing, this report has suggested that the LSAT is not systematically related to other admission prerequisites. Indeed, most law school classes are typified by student bodies with discrepant predictors. Moreover, the vagaries of combined formulas used to rank applicants vitiates the rationale that the LSAT is a common standard, since the variety of formulas combining LSAT scores and UGPA introduces a more mystifying instability in the admissions process from law school to law school. Finally, insofar as the LSAT is useful in triggering a careful review of files, it might be argued that careful review should be afforded to all applicants. As it is, some candidates gain admission while avoiding careful review of their files because their Index number is sufficiently high, while others are summarily rejected without being given a careful review which might otherwise justify their admission. Some may consider the process fairer if all candidates were given a careful review of their files. The LSAT should not shield some from this scrutiny and it should not be depended upon to trigger scutiny of other files.

However persuasive these rationales for disregarding the LSAT scores of candidates may seem, the first obstacle to disregarding the LSAT is the ABA Accreditation Standards for law school which require the use of the LSAT.[27] It may be appropriate to consider amending these standards to allow a serious experiment to be conducted involving admissions based on factors other than the LSAT. Surely with the variety of law schools today, there ought to be latitude in the methods used for selecting law students to reflect this variety of institutional goals. If a law school chooses to disregard the LSAT completely for some or all of its incoming students, a showing that academic standards have been maintained during law school and that students continue to pass the bar examination should be sufficient evidence of the reasonableness of their decision. As it is today, no such experiment is possible among ABA-accredited law schools. Since only a few schools can be expected to adopt such an experiment immediately, there is little likelihood that a potential applicant with high LSAT scores will be denied the opportunity for admission to some law school merely because other law schools choose to disregard the LSAT.

In a sense, the suggestion that the LSAT be disregarded for some or all applicants at certain law schools extends the quest for diversity from a single law school to the entire range of law schools. There is a trend evident currently which encourages all law schools to follow similar admissions policies and even to use the same formula for devising an Admissions Index. Only after these uniform procedures have been adopted is the quest for a diverse student body permitted to go forward. It may well be that more diverse student bodies and even more diversity among law school will be encouraged by a decreased emphasis on standardized test results. At the very least, those suggesting such a course of action ought not be labelled as "opponents of academic standards." Standards will still be maintained in colleges and during law school itself, with the bar examinations standing as the final hurdle for virtually all law students.

NOTES

1. 438 U.S. 265, 307 (Powell, J.)

2. Thorndike, "Concepts of Culture Fairness," 8 J. Educ. Meas. 63 (1971).

3. *Id.*

4. Brown, "A Note on the Determination of 'Acceptable' Performance in Thorndike's Standard of Fair Selection," 17 J. Educ. Meas. 203,207 (1980).

5. Cole, "Bias in Selection," 10 J. Educ. Meas. 237, 240 n. 2 (1973). See also Darlington, "Another Look at 'Culture Fairness'," 8 J. Educ. Meas. 71, 73 (1971).

6. Cole, "Bias in Selection," 10 J. Educ. Meas. 237, 240 (1973).

7. *Id.* at 253-54.

8. Thorndike, "Concepts of Culture Fairness," 8 J. Educ. Meas. 63, 68 (1971).

9. Schmidt & Hunter, "Racial and Ethnic Bias in Psychological Tests: Divergent Implications of Two Definitions of Test Bias," 29 Am. Psych. 1, 5 (1974).

10. 416 U.S. 312 (1974).

11. For example, if 333 minority students had applied to the University of Washington School of Law in 1971 instead of the 70 minority applicants who actually applied, Cole's model could have salvaged the entire program at issue in *DeFunis*. See Breland & Ironson, "*DeFunis* Reconsidered: A Comparative Analysis of Alternative Admission Strategies," 13 J. Educ. Meas. 89, 98 (1976).

12. *Id.*

13. Goldman & Hewitt, "Predicting the Succcess of Black, Chicano, Oriental and White College Students," 13 J. Educ. Meas. 107, 116 (1976); Schmidt & Hunter, "Racial and Ethnic Bias in Psychological Tests: Divergent Implications of Two Definitions of Test Bias," 29 Am. Psych. 1, 7 (1974).

14. Cf. *Bakke v. Regents of the Univ. of California*, 18 Cal. 3d 34, 84-85; 553, P2d 1152, 1186-87; 132 Cal. Rptr. 680, 714-15 (1976) (Tobriner, J., dissenting) ("(T)"he medical school cannot be said to have acted unreasonably or unconstitutionally in deciding, perhaps as a first step, to decrease its reliance on the traditional criteria with respect to applications from disadvantaged minorities, who as a group had been so disproportionately excluded by such criteria.")

15. Peterson & Novick, "An Evaluation of Some Models for Culture-Fair Selection," 13 J. Educ. Meas. 3, 24 (1976).

17. See, e.g. *Bakke v. Regents of the Univ. of California*, 18 Cal. 3d 34, 48; 553P. 2d 1152, 1162; 132 Cal. Rptr. 680, 690 (1976) ("Bakke was also qualified for admission, as were hundreds, if not thousands of others who were also rejected. In this context the only relevant inquiry is whether one applicant was more qualified than another.").

18. Brown, "A Note on the Determination of 'Acceptable' Performance in Thorndike's Standard of Fair Selection," 17 J. Educ. Meas. 203,207 (1980).

19. Novick & Ellis, "Equal Opportunity in Educational and Employment Selection" 32 American Psychologist 306, 308 (1977).

20. Breland & Ironson, "*DeFunis* Reconsidered: A Comparative Analysis of Alternative Admissions Strategies," 13 J. Educ. Meas. 89 (1976).

21. Smith, "Comment" 43, 48 on Pettigrew, "The Effects of the *Bakke* Decision: An Initial Look," in *Bakke, Weber, and Affirmative Action* (1979).

22. *DeRonde v. The Regents of the University of California*, 3 Civil 16732 (1980).

23. Pettigrew, "The Effects of the *Bakke* Decision: An Initial Look," 1, 13 (1979) in *Bakke, Weber and Affirmative Action* (1979) (emphasis in original).

24. See letter of Franklin R. Evans, March 4, 1980, reproduced in Appendix B to this Report.

25. See letter of David M. White, July 19, 1979 reproduced in Appendix A to this Report.

26. A. Jensen, *Bias in Mental Testing* 416 (1980).

27. See note 10 in Chapter 1.

Appendix A

Request for Information sent to all ABA-Accredited Law Schools

July 19, 1979

Dear

The National Institute of Education has funded an investigation being conducted by the National Conference of Black Lawyers into the validity and possible bias of the Law School Admission Test. The occasion for the investigation is the suggestion in Mr. Justice Powell's *Bakke* opinion that a race-conscious admissions process would be upheld if the process were designed to adjust for cultural bias in standardized testing. Mr. Justice Douglas made a similar suggestion in his *DeFunis* opinion concerning the LSAT and law school admissions. The current investigation, therefore, is designed to compile information which could indicate the viability of designing a defensible race-conscious law school admissions process to correct for test bias.

This letter is a request for information which will assist our inquiry into both the validity and possible bias of the LSAT. Since the investigation is concerned with national data and trends, rather than the evaluation of any particular law school admissions process, no school will be identified in the report to be prepared for NIE. The identity of individual applicants to law school will also remain secret.

We would appreciate your school providing two pieces of information which you already have readily available:

1. We would appreciate a description of your admissions process, particularly as it relates to the use of the LSAT and its role in the admissions process. This description may appear in your catalogue, instructions distributed to applicants, or another source which you can identify. We would appreciate copies of these materials for the past three years.

2. We would also appreciate receiving a copy of any validity studies which have been conducted for your school within the past three years. If there have been several studies, we would appreciate a copy of each one. If any validity studies with information about the race of applicants were conducted, please forward a copy regardless of the year it was completed.

Since validity studies are often considered confidential information by law schools, and since our investigation is not interested in probing the policies of any individual law school, we would suggest that you may want to "sanitize" the studies so that they cannot be identified with your school. In order to reduce unnecessary duplicating costs, only Tables 1-4 of the standard validity study connected by the Educational Testing Service will be required to pursue our study.

There are also two data compilations which you may not have already conducted, but which should prove very informative in identifying any discriminatory impact from the LSAT. Neither compilation involves the admissions process of your school—only some information about your applicant pool.

Data Compilation Number 1 involves an anonymous listing of candidates from your four largest undergraduate feeder schools. These four colleges are doubtless already familiar to you since they provide the largest number of *applicants* to your school. Worksheets are enclosed for each college and provide space for listing the ethnic identity, college grade point average and LSAT score for each applicant. For those schools which subscribe to the service, a more convenient procedure may be to duplicate the pages from the Extended Services—Feeder School report which include candidates from these four colleges. Simply delete the names of applicants and the name of the college and add the ethnic identity of each candidate to the pages. Please *do not* include any "admissions index" which you have given these students, nor any indication of whether they were admitted or rejected. We would appreciate this information for the past three application periods.

Data Compilation Number 2 involves a modification of the grid which is now familiar to law school admission officers. The attached worksheet subdivides the boxes associated with a particular combination of grades and LSAT scores. Each box should display the number of Black, Spanish-speaking origin, White and Total applicants falling within that box of the grid. No information about the admission/rejection of these candidates is requested. Please use a separate grid for each of the past three applicant pools. Worksheets for each year are enclosed.

Should you so request, we will provide you with an analysis of your school's data along with a comparison of your results and national trends. As mentioned before, confidentiality of your data will be preserved and no law school will be identified in our report.

We are grateful for your cooperation in this request for information. We realize that these requests constitute additional work for your busy staff. The success of this investigation is dependent upon the information provided by schools such as yours. If you feel that you cannot comply with all of our requests, we will be grateful for whatever information you can send us.

Very truly yours,

David M. White
Principal Investigator

Appendix B

Correspondence Between
Law School Admission Investigation
and
Law School Admission Services

September 7, 1979

Mr. Franklin R. Evans
Educational Testing Service
Princeton, New Jersey 08540

Dear Mr. Evans:

I was disappointed that you did not meet with me during my trip to Philadelphia and New York on August 17-21, 1979. As you know I have accumulated a series of questions about the Law School Admission Test as a result of my previous research about the test. I am not aware of the published materials which can answer my questions. Therefore, when the opportunity presented itself, I sought to talk with you, since all other officials at ETS and the Law School Admission Council have directed me to you.

This letter is a more cumbersome attempt to secure this information. Although the requests are necessarily lengthy, I would appreciate a response at an early convenience, since the information requested is quite important to the completion of an ongoing study of the LSAT being funded by the National Institute of Education. In order to meet the upcoming deadlines, I need to compile and analyze data as efficiently as possible. I have included an Abstract of the proposal submitted to NIE for your information.

In order to make the exchange of information by mail relatively convenient, I have grouped questions according to certain categories of concern. You may find it convenient to respond to my inquiries with reference to these categories so that the significance of the information you provide will be readily apparent. If, however, there are documents which already contain this data, the documents would be preferable sources.

1. Specifications of the LSAT. a) What were the specifications for the original LSAT? These specifications should include the significance of the scoring scale of 200-800, the importance of item difficulty, item-to-test correlations, and efforts undertaken to eliminate possible cultural bias in designing the original test. In addition, background data on the norming population of students at the twelve law schools participating in the norming process, including racial composition of the group, would be appreciated.

b. Has the LSAT been re-normed or re-scaled since 1948? If so, information similar to that requested about the original test would be appreciated. c) When current forms of the LSAT are "equated" with earlier forms, what aspects of the test are kept constant and what tolerance for variation in these aspects is permitted by the test specifications? d) When new item types are introduced into the test, what rationale prompts the introduction? e) What specifications exist to determine the "equatability" of new and old item types.

2. Scoring on the LSAT. a) How many items are included on current forms of the LSAT? b) How many of these items are scored items? c) How many items on each form have previously appeared as scored items on older forms? d) Are all reused items included in the equating process? e) How many correct answers must a candidate make in order to achieve a score of 400, 500, 600, 700 and 800? If there is a variation in the number of necessary correct answers, please provide this information for each of the administrations/forms analyzed during 1977.

3. Predictive Validity of the LSAT. a) What was the original estimate of the predictive validity of the LSAT? If there have been re-estimations of its predictive validity on a yearly or periodic basis, please provide these. b) What was the estimate, if any, of the predictive validity of college grades earned by law students who comprised the original norming group for the LSAT? If there have been re-estimations of the predictive validity of college grades on a yearly or periodic basis, please provide these. c) The Law School Validity Study Service has generated a formula combining LSAT and UGPA into a prediction formula

"based on 1973+1974+1975 entering classes at 123 law schools." In reviewing a validity study for one law school I have noticed that the multiplier for LSAT and UGPA remains the same each time the formula is reproduced, but the percent weight attributed to LSAT and UGPA changes—one combination appears for the total sample, another combination for one subgroup of students, a third for another subgroup of students. Please explain this apparent inconsistency in data presented as an estimate of national trends in validity.

d) What was the first estimate of the predictive validity of the LSAT and UGPA for Black, Chicano, or other minority group students? If there have been re-estimations, please provide these. e) How many law schools have requested validity studies to be conducted with a special subgroup comprised of minority group students during the past three years? f) Have there been validity studies which have produced a negative correlation between LSAT and FYA for minority students? If so, please indicate the number of such instances of negative correlations.

4. Cultural Bias of the LSAT. a) What procedures have been established to eliminate possible cultural bias in the LSAT? When were these initiated? b) Have there been other efforts made from time to time to eliminate any possible cultural bias in the LSAT? c) Is there a regular post-test analysis of items or item-types to detect different response patterns among different cultural groups?

d) During the development of new items and item-types, what participation of minority group members has occurred? e) Are there specifications requiring the inclusion of material thought likely to be familiar to members of minority group students? f) What percentage of items pretested on an actual form of the LSAT are later included as scored items? g) What percentage of the items eliminated after the pretest are eliminated because too many students correctly answered them; because too few students correctly answered them; because there is a negative correlation between the item score and the total test score? h) Is there any analysis of the racial pattern of responses to items in the pretest phase?

5. The Law School Data Assembly Service. a) How many law schools have used a formula generated by the LSDAS to compute an Admissions Index for applicants during the 1979 application year? b) How many schools have used the LCM in a formula generated by the LSDAS during the 1979 application year? c) How many schools subscribed to the Feeder School Report during the 1979 application year? d) When did LSDAS

discontinue the practice of eliminating physical education, military science and practic fine arts grades from an applicant's computed UGPA? What research prompted this discontinuance?

I recognize the tedious length of these questions and the answers they seek. If you should decide that certain information can be more easily transmitted in a telephone conversation, please feel free to call me. I am still hoping to meet with you. Personal interviews are often more useful than written interrogatories because free-flowing discourse enables flexibility in questioning as new information becomes available. I plan to be in Washington, D.C. on November 7, 1979 and would be interested in scheduling a meeting during that upcoming trip.

I look forward to receiving your responses to these requests.

Very truly yours,

David M. White
Principle Investigator

March 4, 1980

Mr. David M. White
Principal Investigator
Law School Admission Investigation
2419 Durant, Suite B
rkeley, CA 94704

Dear Mr. White:

Many of the questions you pose in your letter are adequately answered in research reports that appear in the three volume set of ***Research Reports of LSAC Sponsored Research*** that we sent you earlier. In some cases, where no specific published documentation exists, I have referred your questions to the appropriate professional staff. In these cases, I have asked that they submit answers to specific questions to me which I will then transmit to you. In the remainder of this letter, I will attempt to answer each question in the order listed in your letter. In most instances I will direct you to available literature without comment.

Question 1 (a). I assume by the "original LSAT" you mean form WLS, the first final form of the test that was used at five administrations in 1948. This was a six hour examination containing ten operational sections and three pretests. Item types are given on page 8 of the enclosed history section of *Law School Admission Test Papers*. I suspect that score scale considerations were discussed in early Policy Committee meetings. I assume by "significance of the scoring scale of 200-800" you mean the reason for choosing this particular scale. This scale is simply a variant of the well known "standard score" scale which expresses an individual score as a linear function of its distance or deviation from the average of all scores. In establishing such a scale, the raw score average is set to a convenient number (in this case 500) and the standard deviation of raw scores to a convenient number (in this case 100). Normal distribution theory then would require that more than 99.9 percent of all scores would fall within three standard deviations above and below the average. It is possible that detailed specifications as to item difficulty and level of item to test correlations on form WLS could be found in archieved working files covering that period of the program's development. Standard practice for a test that is designed to provide maximum discrimination throughout the score range calls for a platykurtic distriution of item difficulties. Current specifications call for items to have difficulty indices (deltas) ranging from 8 to 18. As best as I can determine there is no information available (most likely none was collected) concerning background characteristics of the students at the nine law schools who took the first experimental LSAT's.

Question 1(b). LSAT scores have never been reported on any scale other than the 200-800 scale.

Question 1(c). I have referred this question to the Test Development staff.

Question 1(d). There are several reasons for wanting to introduce new item types into a test. Among these are to increase the predictive validity of the test and to achieve greater item efficiency.

Question 1(e). I have referred this question to the Statistical Analysis staff.

Questions 2(a), (b). Current forms of the LSAT contain 155 items *scored* for the LSAT score and 60 or 65 items scored for the WA score. The items on one section of the test are scored for both LSAT and WA. The number of unscored items varies from test to test. In recent forms 30 to 45 minutes of testing *time* has been devoted to unscored items.

Question 2(c). As a general practice in the past several years "scored" items from one form of the test are not used in subsequent forms of the test. There have been minor exceptions to this practice.

Question 2(d). Most forms of the LSAT have been equated through the process of "spiralling," the method considered most appropriate for tests with heterogeneous content such as the LSAT, GMAT, and GRE. This method requires one or more "old" (on-scale) forms and one or more "new" (not on scale) forms to be administered to essentially randomly equivalent samples. In practice "old" and "new" forms are used at the same administration with some candidates taking an "old" form and others taking a "new" form. It is assumed that the samples thus obtained are randomly equivalent, that the underlying abilities measured by the different (old or new) forms are distributed equally in the different samples, and that observed differences in raw score distributions are due primarily to minor differences in the difficulty levels of the different forms. It is these differences that are eliminated through the equating process. This method of equating *does not* involve administering old material and new material to the same candidates.

Question 2(e). Test forms that were used in 1977 are secure forms and therefore, I am not able to answer your question in exactly the way you wish. For recent forms (including those used in 1977) one raw score point translates to between 5 and 6 scaled score points. (See: *Law School Admissions Bulletin Supplement,* enclosed).

Question 3(a),(b). Refer to: French, LSAC 49-1; Schrader and Olsen, LSAC 50-1; Johnson and Olsen, LSAC 52-2; French, LSAC 53-1; Olsen, LSAC 56-1; Miller, LSAC 63-1; Schrader, LSAC 63-2; Schrader and Pitcher, LSAC 64-2; Pitcher, LSAC 65-2; Boldt, LSAC 66-1; Klein, Rock and Evans, LSAC 67-1; Miller, LSAC 67-2; Klien and Evans, LSAC 68-2; Klien & Hart, LSAC 68-3; Linn and Carlson, LSAC 69-1; Carlson, LSAC 70-3; Linn, Klein, and Hart, LSAC 70-4; Reilly, LSAC 71-4; Evans and Rock, LSAC 73-2; Pitcher, LSAC 73-3; Reilly & Powers, LSAC 73-4; Schrader and Pitcher, LSAC 73-5; McPeek, Pitcher, and Carlson, LSAC 74-1; Pitcher, LSAC 74-2; Carlson and Werts, LSAC 76-1; Boldt, LSAC 76-4; Pitcher, LSAC 76-6; Pitcher LSAC 76-7; Pitcher, LSAC 77-5; and Rubin, LSAC 78-1. Schrader (LSAC 76-8) summarizes 632 institutional validity studies conducted by ETS on behalf of LSAC and its predecessor organizations. These 632 studies are all studies done through August of 1976 and involve students who entered law schools from 1948 through 1974. Since Dr. Schrader completed his summary, approximately 400 more institutional studies have been conducted utilizing data for students who entered in 1975, 1976 and 1977. We are currently readying to conduct approximately 140 more studies involving students who entered law school in 1978.

Question 3(c). The percentages to which you refer are proportional weights and are derived from the formula:

$$P_L = \frac{b_L \sigma_L}{b_L \sigma_L + b_U \sigma_U} \quad \text{and} \quad P_U = \frac{b_U \sigma_U}{b_L \sigma_L + b_U \sigma_U}$$

Where PLand Pu are the proportion weights for LSAT and UGPA, respectively; and, b_L and b_U are the raw multipliers for LSAT and UGPA, respectively, derived in the law school; and σ_L and σ_U are the standard deviations of LSAT and UGPA respectively as observed in the sample.

Even though the multipliers could remain stable from sample to sample, the proportional weights could change due to the fact that the distributions of the predictors changed; e.g., the standard deviations observed in two particular samples at a law school were different from one sample to the other. I assume the validity study you were looking at was the special subgroup validity study conducted for in the spring of 1978. You will notice on Table 2 for "Special Subgroup 1" that the "average" formula has a UGPA multiplier of 1.30 and an LSAT multiplier of 1.0. The proportional contribution of UGPA is 47 percent. This percentage is computed as follows:

$$P_U = \frac{130\ (.30)}{1.0\ (45) + .30\ (.30}$$

Where .30 and 45 are the standard deviations for UGPA and LSAT, respectively.

NOTE: The actual standard deviations used by the computer in making the calculation were computed to more significant digits therefore the difference between 47 and 46.43 is due to successive rounding.

These percentages *attempt* to show the proportion of a predicted grade that is attributable to each of the predictors and is directly related to the ratio of the standard regression weights. In a two predictor problem 100% of the predicted grade is a function of the two predictors. If one standard regression weight is, say, 3 times larger than the other, then the inference is that that predictor accounts for 75% of the predicted grade. No attempt is made with this technique to sort our those parts of the predicted grade that is common to both predictors (as would be evidenced by their non-zero intercorrelation). These percentages are no longer produced in institutional validity studies.

Question 3(d). As far as I can tell, the first attempt to study the relative predictive validity of the LSAT for members of "culturally disadvantaged groups" (Schrader, Pitcher, and Winterbottom, LSAC 66-3, p. 376) occurred in 1964. Since that time, several other studies have been completed. See LSAC 72-5, LSAC 73-6, LSAC 74-8. These studies are summarized in Linn, LSAC 75-1. The report of the latest study is in Powers, LSAC 77-3. Other studies addressing the issue are: Pitcher, LSAC 76-6; Pitcher, LSAC 74-6; Pitcher, LSAC 75-3; and Linn and Pitcher, LSAC 76-2.

Question 3(e). Our records do not contain this information. The general policy of LSAC has been to solicit the cooperation of each law school that has a sufficient number of minority students in its student body to participate in the periodic monitoring of potential differential prediction of law school performance for minorities and non-minorities. (See reports cited in answer to question 3d).

Question 3(f). The only studies conducted for LSAC that compared validities (within law school) of minority and non-minority students are LSAC 73-6, 74-8, and 77-3. Pitcher 76-6 compared validities with data pooled across several law schools. In LSAC 73-6 where validities for 5 black groups were compared with white groups from the same law schools (see Table 3), there were no negative validities for black groups. In LSAC 74-8, Table 3 and 4 are the relevant tables. For Chicanos one of the three correlations in Table 3 is negative. This correlation (-.22) however, does not differ significantly (statistically) from the +.20 correlation for non-minority students at the same school. In Table 4, none of the eight correlations of LSAT and FYA for blacks is negative. For LSAC 77-3, Table A.1 in Appendix A is the appropriate table. None of the 10 standardized regression weights for LSAT alone for Chicanos is negative. Two of 29 standardized regression weights for LSAT alone is negative for blacks. In the same table you will note four negative UGPA weights for blacks, two negative UGPA weights for UGPA for whites, two negative WA weights for blacks, and one negative WA weight for whites.

Question 4. I have referred this question to the Test Development staff.

Question 5(a). In the current processing year, 193 law schools use the data assembly service (LSDAS). Of these 149 have LSDAS produce an index. (See *Law School Admission Bulletin Supplement*, enclosed).

Question 5(b). In the current processing year, four law schools either specify separate index formulas for candidates from different undergraduate schools or adjust grades. Three of these schools use LCM to group candidates according to their undergraduate school. LSAC Policy does not allow law schools to use LCM as a direct predictive factor in the production of an index.

Question 5(c). The Feeder School Report is part of the LSDAS Extended Services System. This report is sent *automatically* to all LSDAS schools, once in the spring and once at the end of the processing year.

Question 5(d). The policy took effect with the 1975-76 LSDAS processing year. The report of the research supporting that decision appears beginning on page 393 of the 1975 LSAC Annual Council Report. You should be able to view a copy of that report in the Boalt Hall Admissions Office.

Other questions, especially those relating to the early history of the program, are addressed in the enclosed description of *Law School Admission Test Papers* that ETS holds in its archives for the Law School Admission Council. Some questions regarding the earliest days of the program may be addressed in documents in the archived papers but I have *not* searched those documents as to do so would be both expensive and time consuming. Access to the archives by researchers is governed by a policy established in 1976 by the LSAC Board of Trustees.

I hope you find this information adequate.

Sincerely,

Franklin R. Evans
Program Research Scientist

May 16, 1980

Mr. David White
2419 Durant, Suite B
Berkeley, CA 94704

Dear Mr. White:

In my letter of March 4, 1980 I indicated that some of the questions posed in your September 7, 1979 letter were referred to the appropriate ETS Test Development or Statistical Analysis personnel.

BEST COPY AVAILABLE

Question 1 (c). When current forms of the LSAT are equated with earlier forms, test content, mean difficulty, spread of item difficulties, and mean item-test correlation are kept as similar as possible. Specifications allow for a very slight tolerance for variation on those statistics for any given section. The difference for any two tests should be less than that.

Question 1 (e). Two equated scores are currently reported in the LSAT program. The LSAT score is based on 155 items distributed among five separately timed sections and the Writing Ability (WA) score is based on 60 or 65 items appearing in two separately timed sections. However, sections scores are neither reported nor equated.

When a section containing a new item type is introduced to improve the validity of the LSAT, mean difficulty, spread of difficulties, mean item-test correlation, and section intercorrelation are kept as similar to the earlier form as possible.

Question 4 (a) and 4 (b). For many years, special efforts have been taken to eliminate any possible cultural bias in the LSAT. Minority staff members are assigned to work on the test, and efforts are made to obtain a variety of outside item writers, including substantial numbers of women and minority writers. Efforts are made to include in each new test material of special interest to minorities and to women. Special sensitivity reviews of test content are regularly conducted.

Question 4 (c). Several studies of differential performance have been conducted, see for instance LSAC-72-2 and LSAC-72-6. The general conclusion of these studies and studies in other testing programs is that no consistent differential pattern of responses can be identified. Therefore, only occasional rather than routine studies are performed.

I hope you find this information responsive to your questions. I would very much appreciate a copy of your final report, copies of papers commissioned for your conference, and a list of attendees to your conference.

Sincerely,

Franklin R. Evans
Program Research Scientist

Appendix C

Letter of Denise Carty-Bennia

March 6, 1980

David White, Esquire
Project Director
Law School Admissions Investigation Project
2419 Durant, Suite B
Berkeley, California 94704

Dear David:

Several years ago, in response to a number of complaints from Black law students, the Board of Directors of the National Conference of Black Lawyers (NCBL) voted to convene a National Commission of Inquiry to investigate allegations of discriminatory practices at law schools across the country. Since that time, the number and specificity of the complaints from Black law students alleging that they are being victimized by discriminatory administrative practices and unfair grading has steadily increased to current crisis proportions. In addition, there has been a sharp increase in racial tension within predominantly white law schools since the case of *Bakke v. Regents of the University of California* was first filed. This exacerbation of racial tension caused by *Bakke* has resulted in a severe racial schism that has made the legal educational environment unnecessarily hostile for minority students.

To the extent that these complaints of discrimination are true, added to the increased pressures and diversions of a racially hostile environment, there is a clear and urgent threat to our continuing efforts to increase minority representation in the legal profession. The common effect on minority students is psychologically demoralizing and educationally counterproductive. They must divert their attention from their academic exercises to the defense of their very existence or right to exist within the law school. To ensure minority access to legal educational and employment opportunity, we must eliminate those concerns that are interfering with minority students' ability to pursue academic and professional excellence. As long as minority students are compelled to defend their existence in predominantly white law schools, they are essentially being denied equal opportunity within a highly competitive and demanding profession.

Because of the gravity of the situation, the NCBL Board of Directors has instructed me as Co-Chair to reactivate the Commission, consisting of lawyers, law professors and jurists, to investigate nationally allegations of discriminatory practices at law schools. The charge of the Commission will not be to persecute a law school against which complaints are made. Rather the Commission is designed to:

1) provide a forum for distinguishing frivolous complaints from legitimate grievances and mere speculations from documented instances of discrimintion through the use of a formal hearing process;

2) provide an effective vehicle for this hearing process through the use of minority law professors and practitioners to lend credibility to the effort and remove the responsibility of addressing the subtle issues of racism from the students who are its victims;

3) collect and analyze relevant data and findings to be presented both to law school deans, faculties and legal educational associations for the purpose of strengthening and enforcing equal protection standards and affirmative action policies.

In conjunction with the National Board of the Black American Law Students (BALSA), a session of the Commission has been scheduled for Friday, March 28, 1980, 4-6:30 p.m. during the 1980 National BALSA convention at New York University Law School in New York City. Because of your past interest and service in this area, I am inviting and urging you to serve as a member of the Commission. We need your experience, perspective and insight. Your contribution would be invaluable to the work of this Commission, the profession and the community. Should you desire to serve and find it possible to do so, please let me know as soon as possible by letter or telephone (617-437-3301) to ensure that your name can be included in the convention program.

Thank you for your consideration of this matter. I look forward to your acceptance of this important challenge and to seeing you at the BALSA convention at the end of this month.

Very truly yours,

Denise S. Carty-Bennia
Associate Professor of Law

College Grades and LSAT Scores

An Opportunity to Examine the "Real Differences" in Minority-Nonminority Performance

Joseph Gannon, *Boston College*

Background

A conference entitled "The Future of Affirmative Action in Law School Admissions" would be remiss if its participants avoided one of the stickier problems confronting today's selection committees, that is, if the conference failed to address the sizeable mean difference in LSAT scores between racial and ethnic groups. The highly publicized gap in average group performance levels is not unique to the LSAT. Test after standardized test has repeatedly shown a difference of approximately one standard deviation separating the poorer scoring minority from the majority group of test takers.

Two prevailing, though contrasting, views are offered as explanations for the observed average differences in test scores. From the liberal camp, which remains genuinely sympathetic to the long and hard-fought struggle of minorities for their equal place within the society, it is said that tests are essentially innocuous measures (owing to their scientific "objectivity") which candidly mirror the effect of past discrimination and extant social deprivation. In the winter of 1969 the appearance of Arthur R. Jensen's infamous article in the *Harvard Educational Review*[1] resurrected the opposing conservative interpretation in academic circles that established group differences in test scores are attributable more to hereditary than to environmental factors. Although clearly appended to opposite sides of the nature-nurture controversy, both explanations nonetheless draw a common inference from the disparity in test outcomes. Both camps accept the basic premise that the testing deficit demonstrated by minority groups reflects *real underlying differences* in intellectual ability or achievement.

Representative of the environmentalist position which emphasizes the situational aspects of behavior is the following:

> It would be contrary to basic premises of equality to suppose that a paper and pencil test of educational attainment could determine skin color among students who have been equally educated. Like college grades, test scores penalize blacks not because the tests measure innate intelligence or mental capacity, but rather because they measure abilities which are taught, acquired, and developed in formal education. A different, inferior education naturally tends to produce different, inferior scores.[2]

Those subscribing to Jensen's world view, on the other hand, attribute the locus of causality to the innate inferiority of minorities. Whatever the reason, for liberals and conservatives alike "the differences are real."

Studies pertaining to racial and other group differences abound in the research literature on testing. While the project investigates the same subject matter, it does so by departing from the more traditional research paradigm. Typically, for selection purposes psychometricians and decision makers assess the utility of a given test within a predictive framework. They wish to ascertain, for instance, how accurately the LSAT predicts first-year grades in law school. In contrast with the testing and measurement mainstream, this study adopts the perspective of looking backward in time. By examining the questions of group test score differences within a "post-dictive" framework, the study sets out to disprove a deceptively simple hypothesis that may be formulated as follows: minorities and nonminorities, whose academic performance throughout four years of undergraduate work is the same or nearly the same, will likewise exhibit similar outcomes with respect to their test-taking performance. Stated simply, rough equivalence in undergraduate grade point averages should be associated with a corresponding similarity in LSAT scores when comparing members of each group.

The assumption of little or no LSAT score difference between groups under the restricted conditions just outlined appears to be justified by the absence of any pure test of ability to perform in law school. Current attempts to conceptually distinguish aptitude from achievement are difficult enough; the practical development of distinguishable measures of each psychological construct is virtually impossible. Hence, performance on aptitude tests like the LSAT should closely approximate past scholastic achievement (indicated by grades) since aptitude tests for graduate and professional schools "are intended to measure in large part the knowledge and intellectual skills acquired in school and college; and these are the factors that best predict success in specialized graduate programs."[3]

Sample Characteristics

In order to gather the necessary data for the proposed research, a request was forwarded to 153 ABA-accredited law schools. Admissions officers were asked to undertake several tasks, one of which was most pertinent to the study. This entailed the compilation of each applicant's racial-ethnic identity, college grade point average and LSAT score(s). To make the task somewhat more manageable, the request for information was confined to applicants from their four most prolific feeder institutions who submitted applications during the three previous application periods.

Only 13 law schools replied, and one of these was unable to supply the racial ethnic identity of its applicants, and therefore, had to be eliminated from the study. As it was, the low response rate turned out to be a blessing in disguise. Time constraints and other limited resources barely permitted a thorough going analysis of the cases (N=19,287) for whom we did receive usable data. In all, data were compiled for 136 cohorts of annual feeder school reports. One responding institution provided additional information about the applicant's undergraduate major and the year of graduation which enabled a more refined level of analysis than that originally intended.

Of the 12 law schools remaining in the sample, six are state affiliated and six are private institutions. With regard to geographic distribution, law schools on both coasts seem to be better represented than other regions of the country—including four western and three eastern schools—although each region contributed at least one school to the sample. Schools appeared to be evenly distributed along a prestige continuum with three of the country's most selective institutions participating in the study.[4] Sample characteristics shall remain somewhat sketchy in order to preserve the confidentiality of the responding law programs.

Justifiably, this study would be subject to serious criticism if one of its purposes was to generalize the findings beyond the small sample of responding institutions to the broader population of ABA-accredited law schools. Despite a semblance of representativeness along some key dimensions, as noted above, there are always questions of selection and non-response biases to be considered. This study will confine the scope of its discussion to the immediate findings. Nevertheless, it should be kept in mind that even research studies sponsored by the Law School Admission Council rarely achieve a degree of sampling sophistication to rival that reported herein.

Method of Computing Basic Comparisons

Prior to discussing the procedure for computing minority-nonminority comparisons, it is important to stress the fact that all comparisons are restricted to applicants from the *same* undergraduate institution applying for entrance to the *same* law school in the *same* application year. Such constraints control for numerous sources of between-school variation that might otherwise contaminate comparative findings in a study of group differences. By taking these precautions the study is able to rule out, for example, between-school variation in undergraduate grading policies and observed grade distributions, as well as the differential quality of undergraduate education as plausible explanations for the findings. In addition, disturbances caused by rank in class are attenuated considerably by requiring comparability of minority-nonminority cumulative undergraduate grade point averages (UGPA).

The basic aim of this study is to examine the difference in

LSAT scores of each minority applicant with those nonminority applicants from the same undergraduate feeder institution who demonstrate a sustained and comparable level of academic achievement as evidenced by the UGPAs. For purposes of this study, comparable nonminority applicants are defined as those whose UGPAs fall within the range of the referent minority-group member's UGPA plus or minus .10. To illustrate, the relevant nonminority comparison group for a Black applicant within a UGPA of 3.00 would include those nonminority applicants reporting UGPAs between 3.10 and 2.90. A bandwidth of plus or minus .10 is considered reasonably narrow for operationally defining equivalence in academic performance. After all, there is a certain standard error of measurement associated with college grades, and law school admissions officers express a reluctance to make practical, selection/rejection decisions based on such a slim margin of difference in applicants' UGPAs.

Once the relevant nonminority comparison group is established, each minority's LSAT score is subtracted from the average LSAT score for that comparison group. The basic LSAT score differences are computed iteratively until the number of minority applicants appearing in a cohort is exhausted. Then the steps are repeated for other minority applicants in the next cohort until basic comparisons have been calculated for all 136 of the applicant pools.

It should be noted that any given nonminority group member may be included in more than one comparison group within the same applicant pool. Overall, a small proportion of minority applicants are found to be without any relevant nonminority comparison group. Reasons for this are apt to be traced either to an occasional minority applicant with a relatively high or low UGPA or to a minority with the UGPA and/or LSAT score reported as missing.

Discussion of Findings

As the summary statistics in Table 1 clearly show, the minority-nonminority group differences in LSAT scores are staggering. This is particularly so for Blacks and Hispanics who differ from their white counterparts by approximately one standard deviation. Notice the persistence of this magnitude of spread in spite of all efforts to equalize the applicants being compared on the basis of their college grades and to control for between-school sources of variation. A substantial LSAT score gap also exists in the case of Native American applicants. Although the margin separating Asian Americans from nonminorities is considerably less than other minority groups, a mean deficit of 36 points on the LSAT somewhat belies the stereotype of the "overeducated," testwise Oriental which is oftentimes raised as a counterargument to the view that tests are culturally biased.

TABLE 1
Mean UGPA and LSAT Scores for All Applicant Groups and Minority-Nonminority LSAT Scores Differences by Minority Group

Applicant Group	No. compared[1]	Mean UGPA[2]	Mean LSAT[2]	Minority Nonminority mean LSAT score difference
Minorities				
Blacks	727	2.91	498	-110
Chicanos & Latinos	482	3.02	525	-97
Native Americans	48	2.98	531	-78
Asian Americans	379	3.32	607	-36
Nonminorities	NA	3.28	618	NA

[1] These figures represent minority-group members in the sample for whom an appropriate nonminority comparison group/individual was available.

[2] Mean UGPA and LSAT are included as a basis for subgroup comparison; other column entries in the table are not applicable to nonminorities (N=16,233).

Of course, there are several possible alternative explanations which might account for these otherwise dramatic findings. To the extent that the data permitted additional analyses, the study attempted to examine a few of the more plausible rival hypotheses.

For instance, one might impute a significant proportion of the wide gap in LSAT scores to a college's changing standards of academic performance over time—what is often referred to as the "grade inflation problem." It may be that the degree of difficulty presented by a student's chosen field of study contributes to the difference in LSAT scores as well. Competition for good grades may vary from one department or area of academic concentration to another in the same institution.

The study was able to assess the impact of these particular within-school sources of variation for the one law school that provided information pertaining to undergraduate major and year of graduation. Reported undergraduate majors were recategorized into broader subject matter codes similar to those used in another study.[5] Certain majors were retained as individual categories due to their frequency of occurrence. The ten course types were history, economics, government-political science, psychology, sociology, other social sciences, natural sciences, business, engineering, and other humanities.

A refined series of comparisons have been conducted by recomputing the LSAT score differences for each minority with more restrictive criteria for defining nonminority comparison groups. Not only must academic performance be comparable in this analysis, but there have to be matching subject matter codes, and a qualifying nonminority's year of graduation must fall within a range of plus or minus two years from the time the referent minority-group member graduated.

Fortunately, there are an adequate number of both minority and nonminority applicants in 18 separate cohorts or applicant pools making the refined, comparative results all the more meaningful. If these within-school sources of variation are spuriously accounting for a sizeable proportion of the observed gap, one would expect their direct inclusion as criteria for refined comparisons to lessen the margin of LSAT score differences. In other words, a simple measure would be to determine in what proportion of cases, when shifting from the "basic" to the "refined" method of computation, is there actually a decrease in the amount of group LSAT score differences. On the other hand, what proportion represents an increase in the spread or remains constant across measurement conditions?

TABLE II

Numbers and Percentages of Changing LSAT Score Differences by Minority Group When Shifting from the Basic to the Refined Method of Computing Minority-Nonminority Comparisons

	Decreases in the LSAT score difference		Increases in the LSAT score difference	
Minority	N	%	N	%
Blacks	83	51.6	78	48.4
Chicanos & Latinos	86	54.8	71	45.2
Asian Americans	90	57.3	67	42.7
Native Americans	9	56.2	7	43.8
Totals	268	54.6	223	45.4

These figures include three cases (i.e., two Blacks, one Hispanic) where the LSAT score difference remained constant across computation methods.

From the percentages in Table 2, it is obvious that the shift to refined comparisons produces proportionately more reduction than expansion in the minority-nonminority LSAT score gap; and it is a consistent pattern whether looking at the aggregate or each minority group separately. Still, a large proportion overall, 43.2%, consist of an increase in the LSAT score difference or no change at all. Upon closer examination, even in those cases where the gap is reduced, seldom are the LSAT scores evened up. Of the 279 total cases involving some degree of shrinkage, 141 (50.5%) remain separated by at least 50 points on the LSAT. This is certainly insufficient evidence to support within-schools variability as a reasonable explanation for the original, dramatic differences in LSAT scores. As one potential counterargument, it fails empirically to supplant other plausible explanations for the findings.

Referring once again to Table 1, another alternative hypothesis is suggested. With the exception of Asian Americans, minorities in the sample tend on average to have lower UGPAs than nonminorities. One might surmise from this that summary measures of groups LSAT score differences will be inflated by the presence of a disproportionately large number of minorities with lower grades. That is, minorities with lower grades should concomitantly experience a greater LSAT score discrepancy with their relevant comparison group, and therefore, the original findings may largely be due to sample-specific selection bias. Conversely, if the sample were comprised of more minorities with higher UGPAs, then group test-taking differences would essentially disappear. Another way of stating the argument is in correlational terms. One would expect a strong and negative relationship between the distributions of difference scores on the LSAT and minority UGPAs in order that the hypothesis be supported.

Pearson product-moment correlations were computed within each minority group and for the total of minority applicants. The coefficients are: -.18 (N=727) for Blacks, -.19(N=482) for Chicanos and Latinos, -.14(N=48) for Native Americans, -.17(N=379) for Asian Americans, and -.26 (N=1,636) overall. Results are consistently in the expected direction, however hardly of a magnitude to uphold this, the second hypothesis. Rather, it appears that minority-nonminority testing discrepancies persist across the entire range of the grading curve.

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A third, alternative hypothesis would posit a uniformly more lenient grading of nonminorities as contrasted with minorities at the various undergraduate feeder institutions. An investigation of this explanation for the findings is well beyond the scope of this particular study. The subject of "reverse discrimination" in grading practice, however, is vulnerable to attack on several grounds, not the least of which is the evidence documenting depressed rates of grade inflation among black colleges vis-a-vis other institutions as presented in a study by Sandra Weckesser in this volume. Minority students within predominantly white colleges are as likely to be downgraded for their academic performance as anything else, unless one is willing to entertain a vision of the nation's colleges staffed primarily by minority professors or by "bleeding-heart liberals" whose grading habits are influenced more by a sense of "white guilt" than by the quality of a minority student's work. Such a view is unlikely to sit very well with most members of the academy for it does not jibe with their self-image, let alone with the reality of college life. First of all, relatively few college-level faculty are minority. While the stereotype of the university as a hotbed of "liberal thinking" persists, studies of academics attest to a much more diversified sub-population with respect to their political ideology in general, as well as specific attitudes about race relations.

Summary

Keeping in mind the preliminary nature of this investigation and invoking the appropriate caveats as to the study's sampling and data constraints, it is nonetheless compelling that the vast majority of the group differences in test scores are as yet to be explained. Given that, the single most reasonable explanation would be to focus on the test itself and/or influences of the testing milieu. Until these findings can otherwise be explained away, the magnitude of the differences certainly lends credence to claims that the LSAT is culturally biased in its content, or that systematic, differential outcomes are directly attributable to such factors as anxiety, test-taking knowledge and experience, in addition to the undue stress of a speeded exam for those, who bright as they may be, process information more slowly, carefully and analytically.

Clearly, the data reveal that law school applicants with essentially equivalent college grades are apt to receive widely discrepant LSAT scores depending upon their race or ethnicity. Whereas past discrimination and deprivation must always be acknowledged, it is important to realize that this study pertains to minority applicants who overcame innumerable social and economic barriers as evidenced by the criterion of academic parity in matching them with majority applicants in the same applicant pool. Consequently, academic equals are suddenly and systematically reduced to intellectual inferiors as a result of their poorer performance in the testing situation, or so the argument goes for those believing that the test differences are truly "real." Put rather bluntly, what it took four years to build up, it required roughly four hours to tear down.

Law schools, for their own part, subscribe to the notion that test scores reflect real underlying differences. At the moment, there is a growing tendency for admissions committees to rank their applicants, at least for the initial pass, by according greater weight in a numerical formula to the LSAT score in combination with the applicant's UGPA. This trend is most alarming to minority students who have achieved respectably high levels of academic success. For them, the denial of future access to legal eduction because of low test scores becomes a particularly bitter pill to swallow.

NOTES

1. Arthur R. Jensen, "How Much Can We Boost I.Q. and Scholastic Achievement?", 38 *Harvard Educational Review* 1 (Winter 1969).

2. Brief for the Law School Admissions Council as Amicus Curiae at 3, *Regents of the University of California v. Bakke*, 98 S.Ct. 2733 (1978).

3. Arthur R. Jensen, *Bias in Mental Testing*, 54 (New York: The Free Press, 1980).

4. Relative prestige or selectivity was determined by comparing the GPA and LSAT profiles of sample institutions with others appearing in the *79-80 Pre-Law Handbook*, Association of American Law Schools and the Law School Admission Council, 1979.

5. Richard R. Reilly and Donald E. Powers, "Extended Study of the Relationship of Selected Transcript Information to Law School Performance," in 2(LSAC-73-4)at 405 (1973).

The Double Jeopardy of the GPA

A Comparative Study of Grade Distribution Patterns and Grade Inflation by Types of Colleges and Universities

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I. INTRODUCTION

Since the *DeFunis* case[1] and even before, much attention has been focused on the LSAT and other standardized tests as the primary obstacles to professional and graduate school admission for black and other minority college graduates. This study suggests that the emphasis or concern surrounding the potentially adverse impact of standardized tests on such applicants may have obscured an equally important and possibly even more pervasive problem for black students in gaining admission to graduate and professional schools, and that is the phenomenon of grade inflation, as educators have come to recognize it, which has occurred over the past 10 or so years.

Simply because grade inflation went unnoticed in the early stages and has not been the subject of systematic analysis until now,[2] the undue burden it has placed on the credentials of black college graduates has remained undiagnosed, hidden from even the intense scrutiny of the most discerning law school admission committee member.

Although the focus of this study is on potential law school applicants, it is important to remember that the undergraduate college grade point average (GPA) has a far wider application than simply law school admissions, and thus has a far greater opportunity to have an adverse impact on its bearers. The GPA's importance extends to admissions to other professional schools, graduate schools, and even to many prospective employers—all of whom evaluate their applicants, at least in part, on the basis of the college GPA.

II. THE PROCESS OF DISCOVERY

This study had its genesis, not in an abstract research hypothesis, but rather as the result of an attempt to answer the real day-to-day questions occurring in a law school admissions office about undergraduate college grades, and as a result of the attempt to make sense of the surprising answers to some of those daily questions. For example, every member of the Temple Law School admissions committees was naturally curious to learn whether his or her *alma mater* had withstood the pressure to jump on the grade inflation bandwagon. One faculty member, on his way to an LSAC-sponsored regional workshop for pre-law advisors from predominantly black colleges, wanted to know about the grading patterns at some of those colleges. Another inquiry from a diligent committee member prompted a look at grade distributions at several small public colleges in Pennsylvania and New Jersey. And so it went until it became apparent that college grade distribution schemes were quite disparate—far more so than anyone had imagined—and in need of careful, systematic comparison.

***

Fortunately, since 1973 a rich source of information on college grade distribution patterns has been available. In 1973 the Services Committee of the Law School Admission Council (LSAC) compiled and published the first *Guide to the Interpretation of Undergraduate Transcripts*. This guide included an explanation of undergraduate GPAs for all 1971-72 Law School Data Assembly Service (LSDAS) registrants by individual school, and in many cases the GPA distribution for the individual school's entire 1972 graduating class.

Then in 1974, the LSAC directed the Services Committee to compile and distribute a revised and expanded *Guide to Undergraduate Colleges (Guide)*, which combined the information contained in the former *Guide to the Interpretation of Undergraduate Transcripts*, with the *Law*

School Admission Test Statistical Summary: Mean Scores Grouped by Most Recent Institution Attended and the *Percentage Distribution of Grade Point Averages of Undergraduate Colleges as Earned by LSDAS Registrants.* Since 1974, the Services Committee of the LSAC has published an annually revised *Guide.*[3]

A review of several editions of the *Guides* led to the first important discovery about the grade inflation phenomenon. What is so surprising about grade inflation is not that it has occurred, but that it has occurred so unevenly. For example, compare the grade distribution of (real but fictitiously named) Claiborne College and Tightlid College.[4] (Fig. 1)

Note the widely divergent grade distributions between Claiborne College and Tightlid College. While 18 percent of the graduating seniors at Claiborne graduated with GPAs of 3.60 or greater, only 5 percent of the graduates of Tightlid had GPAs of 3.60 and above. Such potentially useful comparisons were not obvious, however, when wading through the more than 800 colleges listed in the *Guide*. Thus, the individual schools' distributions remained obscured until some focal point was selected. For a variety of reasons, the 3.0 grade point average was chosen.[5] The next step, obviously, was to total the percentages for each grade range (e.g. 3.25-3.29) from 3.0 up for each college and university reported in the *Guide*, as in Figure 1.

It is now easy to compare the GPA distributions of Claiborne and Tightlid Colleges. While 71 percent of the seniors graduating from Claiborne College earned GPAs of 3.0 and above, only 35 percent of the seniors graduating from Tightlid College earned GPAs of 3.0 and above.

Next, a list was compiled of all the colleges in the *Guide* showing the percentage of grades awarded at the 3.0 level and above.[6] Figure 2 is such a list.

FIGURE 1

CLAIBORNE COLLEGE

Percentage Distribution of Senior Class GPAs - 1973-74 (based on 200 students)

	4.00 & up	3.80 3.99	3.60 3.79	3.40 3.59	3.20 3.39	3.00 3.19	2.80 2.99	2.60 2.79	2.40 2.59	2.20 2.39	2.00 2.19	1.99 DOWN
[% of class:]	0	4	14	19	19	15	10	5	5	4	5	0

Total: 71%

TIGHTLID COLLEGE

Percentage Distribution of Senior Class GPAs - 1973-74 (based on 277 students)

	4.00 & up	3.80 3.99	3.60 3.79	3.40 3.59	3.20 3.39	3.00 3.19	2.80 2.99	2.60 2.79	2.40 2.59	2.20 2.39	2.00 2.19	1.99 DOWN
[% of class:]	0	1	4	6	9	15	17	16	17	9	5	1

Total: 35%

FIGURE 2

College	% grades at 3.0 and above
Abalone	63
Artichoke	44
Blackacre	32
Blofeld	25
Crimson	41
Carnation	42.5
Dillitante	28
Durward	47.3
Esquire	47
Evangelical	51
Fosdick	47
Factory	30
Gargoyle	43.1
Greene	31
Holmes	33
Hastie	51
Ivy Hall	52
Intellectual	22
Jensen	31
Joliet	33.2
Krank	65
Kaper	35
Lovelace	46
Listless	31.98
Mudge	19
Milestone	41
Nixon	63
Normal	44
Obermeyer	38
Olantangy	43
Pumpernickel	48
Peanut	18
Quentin	48
Quire	42
Rose	46
Ribbon	40
Steward	46
State	34
Twinkle	69

For every year the *Guide* has been published, the grade distributions for each college in the *Guide* have been totalled and a similar list compiled. While some clustering or grouping of grade distribution patterns by types of colleges was immediately discernible, in part because of repeated applications to Temple Law School from certain undergraduate feeder schools, it became apparent that a more formal study of grade inflation trends would be useful.

III. THE STUDY

A. Collecting and Defining the Data

To move beyond the most general observation that grade inflation has occured unevenly, it was necessary to define, collect, group, and analyze the colleges by type as follows.

1. *Ivy League*

The schools which are members of the Ivy League are Brown, Columbia, Cornell, Dartmouth, Harvard, Princeton, Yale and the University of Pennsylvania.

2. *Ivy equivalents* ("Potted ivy"[7])

A number of very well known colleges and universities throughout the country (including *inter alia* the Seven Sisters[8]) while not members of the Ivy League, per se, enjoy similar, and in many cases, equivalent national reputations and prestige as particularly fine educational institutions, with equally selective admissions policies and distinguished alumni/ae, as do the eight Ivy League colleges.

Th[illegible] group of colleges and universities is limited for the purp[illegible]s of this study to those schools and universities ranked "most selective" by Alexander Astin in *Predicting Academic Performance in College: Selectivity Data for 2300 American Colleges.*[9] For most of the comparisons in this report, group (1) Ivy League colleges, and group (2) "Potted Ivy" colleges and universities, are treated together and referred to as "Highly Selective"[10] institutions.

3. *Public and Private institutions*

Schools are classifed as public or private[11] based on the information the schools themselves submitted for publication in the 1979-80 *College Handbook.*[12]

4. *Predominantly Black colleges and universities* are defined as the 83 four-year, undergraduate colleges or universities which are members of the National Association for Equal Opportunity in Higher Education (NAFEO), and who have supplied descriptions of their colleges to the *College Handbook*. NAFEO describes itself as a non-profit, voluntary, independent association of historically black colleges.[13] In addition to the NAFEO members, the College of the Virgin Islands has been included, which has 90 percent minority[14] students. While several colleges and universities in Alaska and Hawaii also have predominantly minority populations, none of them has provided grade distribution information to the Law School Data Assembly Service nor do the grade distributions of their LSDAS/LSAT registrants appear in the *Guide*.

5. *Small, Medium and Large institutions* are defined as follows: schools with full-time undergraduate enrollments from 1 to 3000 are classified as "Small"; schools with full-time undergraduate enrollments from 3001 to 6000 are classified as "Medium"; and schools with full-time undergraduate enrollments with 6001 or over are classified as "Large."

Enrollment figures are from the 1979-80 edition of the *College Handbook* and are submitted to the *Handbook* by the colleges themselves.

6. *Gender-based institutions*

Schools are classified as "for Women," "for Men" or "Coeducational" based on their self-descriptions as reported in the 1979-80 *College Handbook*.

7. *Religious affiliation*

Schools are classified as Non-sectarian, Protestant, Roman Catholic, Jewish, or Other, based in most cases on the schools' descriptions in the 1979-80 *College Handbook*. Some classification difficulties were encountered with a few Protestant and Roman Catholic colleges which are, in practical terms, wholly independent of their respective churches and therefore describe themselves as "independent" in the *College Handbook* or omit religious affiliation altogether. However, we have grouped as Protestant or Roman Catholic, those schools which were historically affiliated with or founded by a Protestant sect, the Roman Catholic Church or

FIGURE 3

PERCENTAGE DISTRIBUTION OF UNDERGRADUATE DEGREE GPA'S

4.00 and UP	3.80 3.99	3.60 3.79	3.40 3.59	3.20 3.39	3.00 3.19	2.80 2.99	2.60 2.79	2.40 2.59	2.20 2.39	2.00 2.19	1.80 1.99	1.60 1.79	1.59 and DOWN
1	8	15	19	19	16	10	6	4	2	1			

PERCENTAGE DISTRIBUTION OF SENIOR CLASS GPA'S

CLASS OF (BASED ON STUDENTS) DATA SUPPLIED BY INSTITUTION

↓ Entente University

PERCENTAGE DISTRIBUTION OF UNDERGRADUATE DEGREE GPA'S

4.00 and UP	3.80 3.99	3.60 3.79	3.40 3.59	3.20 3.39	3.00 3.19	2.80 2.99	2.60 2.79	2.40 2.59	2.20 2.39	2.00 2.19	1.80 1.99	1.60 1.79	1.59 and DOWN

PERCENTAGE DISTRIBUTION OF SENIOR CLASS GPA'S

CLASS OF (BASED ON STUDENTS) DATA SUPPLIED BY INSTITUTION

	7.7	3.8	3.8	9.6	7.7	13.5	13.5	19.2	7.7	13.5		AND	DOWN

↓ Veil College

PERCENTAGE DISTRIBUTION OF UNDERGRADUATE DEGREE GPA'S

4.00 and UP	3.80 3.99	3.60 3.79	3.40 3.59	3.20 3.39	3.00 3.19	2.80 2.99	2.60 2.79	2.40 2.59	2.20 2.39	2.00 2.19	1.80 1.99	1.60 1.79	1.59 and DOWN
1	8	15	19	19	16	10	6	4	2	1			

PERCENTAGE DISTRIBUTION OF SENIOR CLASS GPA'S

CLASS OF (BASED ON STUDENTS) DATA SUPPLIED BY INSTITUTION

a Roman Catholic order of sisters, brothers or priests, and where the basic principles of the founders are still present in the educational traditions or public statements of purpose of the individual schools.

8. *LSDAS-supplied and school-supplied percentage grade distributions*

Many schools report their grade distribution by percentage to the Law School Data Assembly Service (LSDAS). Such a report, based on the individual school's entire graduating class for a given year, appears in the *Guide* as seen in Figure 1, *supra*. Hereafter this type of data will be referred to as "school-supplied" grade distribution data.

In the process of using the information in the *Guide*, it is important to understand that not all schools report their grade distributions for their graduating class each year. When a school does not supply its own grade distribution but there are at least 25 LSAT and/or LSDAS registrants from that college within a three-year period, the *Guide* will show the school's grade distribution based only on the LSAT/LSDAS registrants as in the top of Figure 3.

Hereafter this type of data will be referred to as "LSDAS-supplied" grade distribution data.

In this study the analysis of college grading patterns has been limited, wherever possible, to the school-supplied percentage grade distributions. In a study comparing grade inflation among different colleges and universities, the *school-supplied* percentage grade distributions, as distinguished from the *LSDAS-supplied* percentage grade distributions, form the better, more reliable, data base.[15]

First, the school-supplied data represents the grade distribution pattern for the entire graduating class. It is not a sample. To illustrate, Jane Austin applies to law school from "Entente University" with a GPA of 3.4. Entente supplies its own grade distribution report for Jane's graduating class as shown in the middle of Figure 3.

By totalling the percentage distribution from the 3.4 level up, we may conclude with reasonable certainty that Jane Austin is within the top 20 percent of her graduating class.

On the other hand, if Zane Grey applies to law school from "Veil College" with a GPA of 3.4 and Veil does *not* report its own grade distribution, the GPA distribution will be derived from only those students at Veil who have registered for the LSDAS and/or the LSAT (if there are 25 or more) over the three-year period prior to Zane's application. The percentage distribution for LSAT and/or LSDAS registrants from Zane Grey's college will appear in the *Guide* as in the bottom of Figure 3.

Based on this information, it appears that Zane Grey's 3.4 average may place him within the top 50 percent of his college class, but the LSDAS-supplied percentage distribution actually represents the GPA distribution for only a sample of the Veil student body. Here self-selection introduces a bias into the sample. The sample is made up of only those students who chose to take the LSAT and/or register for the LSDAS. While samples are often useful when the entire population is not available, they are helpful only to the extent that they are representative of the entire population. As the *Guide* cautions, the GPA distributions based on the whole senior class is more representative of an institution's entire student body.[16] At some schools, the LSAT/LSDAS students may be representative of the total senior class, in others the LSAT/LSDAS students may be the better students, and in yet others, the LSAT/LSDAS students may be the lower achievers. We simply cannot tell.[17]

For the foregoing reasons, the grade distribution comparisons, with the two exceptions noted immediately below, have been limited to those schools which have reported their own grade distributions for their entire graduating classes.

B. Structuring the Data

1. For two groups of schools, the school-supplied distributions were collapsed with the LSDAS-supplied distributions because the number of schools in each group would have been too few to be helpful to the study.

With the exception of the discussion in §III-C-3, the 39 school-supplied cases and the 26 LSDAS-supplied cases for the Highly Selective schools are grouped together:

39 school-supplied GPA distributions
+26 LSDAS-supplied GPA distributions
-1 omission[18]
—
64 Total number of cases of GPA distributions from Highly Selective schools

Likewise, with the exception of the discussion in §III-C-3, the 13 school-supplied cases have been grouped with the 32 LSDAS-supplied cases from the Predominantly Black colleges and universities:

13 school-supplied GPA distributions
+32 LSDAS-supplied GPA distributions
—
45 Total number of cases of GPA distributions from Predominantly Black colleges and universities.[19]

2. Most of the comparisons in this study use the grade distributions reported in the most recent *Guide*, the 1979 edition. However, it was thought that a look at chronological trends might also be helpful, so grade distribution percentages were compiled when available from the 1974 *Guide* and the 1976 *Guide*.

3. Of the more than 1700 four-year undergraduate colleges and universities described in the *College Handbook*, grade distribution data exists in the 1979 *Guide* for 821 schools. The missing grade distributions occur either because schools did not report their grade distribution percentages to LSDAS or because, in all but two of the major classification groups, the focus was on school-supplied percentages rather than LSDAS-supplied percentages.

C. Comparing grade distributions among colleges

First, the 1979 distribution patterns are presented for all schools as defined in section II-B. Next the GPA distributions are compared among the major classifications. Finally, grade inflation trends over time for five of the major classifications are compared using the GPA distributions available from the 1974, 1976, and 1979 Guides.[20]

1. *All schools*

Note the results of the frequency distribution in Table I for the total pool of 821 schools for 1979 GPAs at the 3.0 level and above. For the entire group the mean percentage is 50.187% and the median percentage is 49.250%.[21] Indeed for all the classifications reported above in Table I, the means and medians are very close together indicating that the frequency distributions are quite even at all levels. There was considerable range in the percentage distributions with the lowest percent distribution at 11.2% and the highest at 95.0%. The standard deviation for the entire pool was 12.764—that is to say, approximately two thirds of all the school distributions fell between the 37 and the 63 percent levels.

2. *Comparisons between major classifications*

Table II-A compares the percentage of GPAs at the 3.0 level and above between the Highly Selective schools and the Predominantly Black schools. (Recall that for both of these classifications, the school-supplied GPAs and LSDAS-supplied GPAs have been merged because of the fewer number of total cases.) Note that in 84.1 percent of the Highly Selective colleges (53 out of 63) more than 50 percent of the class graduates with GPAs at or above 3.0. Among the Predominantly Black colleges, however, only 22.2 percent of the colleges (10 out of 45) have 3.0 GPAs at the 50 percent level or above.

Table II-B compares the Highly Selective schools with Other schools. Here, Other includes only Private colleges which are not also classified as Predominantly Black, Roman Catholic or Highly Selective. Again, 84.1 percent of the Highly Selective colleges graduate 50 percent or more of their class with 3.0 GPAs or better, whereas only 51.9 percent of the Other colleges graduate half of their students with 3.0 GPAs.

Next, Table II-C contrasts GPA distributions between the Highly Selective colleges and Public colleges. In this comparison there are five fewer cases of Highly Selective colleges because five Highly Selective colleges were also Public institutions and so were grouped with the Public colleges. Here while 86.2 percent of the Highly Selective

TABLE I - ALL SCHOOLS

% GPA Distribution at 3.0 level or above

School Classification	No. of Schools	Mean	Median	Lowest	Highest	Standard Deviation
Small colleges & universities (0-3000 students)	545	51.905	51.905	11.2	95.0	13.487
Medium colleges & universities (3000-6000 students)	115	47.058	46.017	17.0	78.0	11.442
Large colleges & universities (6000 or more students)	160	46.499	45.990	19.6	85.0	9.605
Highly Selective colleges & universities	65	63.856	65.012	31.1	93.0	13.621
Private colleges & universities	557	52.720	52.400	11.2	95.0	13.260
Public colleges & universities	260	44.663	44.950	15.9	72.0	9.610
Non-sectarian colleges & universities	445	48.399	46.700	15.9	93.0	12.460
Protestant colleges & universities	226	51.061	50.550	11.2	83.1	11.127

Roman Catholic colleges & universities	138	53.405	53.983	22.600	95.0	11.695
Jewish colleges & universities	3	62.333	64.000	43.0	80.0	18.556
Men's colleges & universities	19	44.737	43.267	23.0	95.0	17.571
Women's colleges & universities	61	58.315	57.400	24.400	89.4	12.015
Coeducational colleges & universities	739	49.642	48.542	11.2	93.0	12.444
Predominantly black colleges & universities	45	40.869	39.900	11.2	72.0	13.351
All schools	821*	50.187	49.250	11.2	95.0	12.764

*The total number of cases by classification (4150) is obviously much greater than the total number of schools. This is because many of the classifications cannot be mutually exclusive. For example, one institution may be classified as a Small, Highly Selective, Private, Non-sectarian, Predominantly White, Coeducational college or university. Within each bracket, however, the classifications are, of course, mutually exclusive. There are 3 missing cases in the subset of private/public institutions; 8 missing cases in the religious affiliation subset; and 1 missing case in the gender-based classification subset. The missing cases occurred when the college did not provide any information by which to assign a classification.

TABLE II-A
Highly Selective schools compared to Predominantly Black Schools

Number of schools	Mean % GPA Distribution at 3.0 level and above
63 Highly Selective	63.8556%
45 Black	40.8689%

	Highly Selective	Black	Row Total
Number of schools with 3.0 GPA distributions below 50%	10 (15.9%)	35 (77.8%)	45 41.7
Number of schools with 3.0 GPA distributions at or above 50%	53 (84.1%)	10 (22.2%)	63 58.3%
	63 58.3%	45 41.7%	108 100.0%

TABLE II-B
Highly Selective schools compared to Other schools

Number of schools	Mean % GPA Distribution at 3.0 level and above
63 Highly Selective	63.8556%
343 Other	51.0332%

	Highly Selective	Other	Row Total
Number of schools with 3.0 GPA distribution below 50%	10 (15.9%)	165 (48.1%)	175 43.1%
Number of schools with 3.0 GPA distribution at or above 50%	53 (84.1%)	178 (51.9%)	231 56.9%
	63 15.5%	343 84.5%	406 100.0%

TABLE II-C
Highly Selective schools compared to Public schools

Number of schools	Mean % GPA Distribution at 3.0 level and above
58 Highly Selective	65.1069%
260 Public	44.6631%

	Highly Selective	Public	Row Total
Number of schools with 3.0 GPA distribution below 50%	8 (13.8%)	192 (73.0%)	200 62.9%
Number of schools with 3.0 GPA distribution at or above 50%	50 (86.2%)	68 (26.2%)	118 37.1%
	58 18.2%	260 81.8%	318 100.0%

TABLE II-D
Highly Selective schools compared to Roman Catholic schools

Number of schools	Mean % GPA Distribution at 3.0 level and above
59 Highly Selective	64.0492%
138 Roman Catholic	53.4051%

	Highly Selective	Roman Catholic	Row Total
Number of schools with 3.0 GPA distributions below 50%	10 (16.9%)	44 (31.9%)	54 27.4%
Number of schools with 3.0 GPA distributions at or above 50%	49 (83.1%)	94 (68.1%)	143 72.6%
	59 29.9%	138 70.1%	197 100.0%

colleges (50 out of 58 colleges) have senior classes with 50 percent of the students receiving at least a 3.0, only 26.2 percent (68 out of 260) of the Public institutions graduate their seniors at that rate.

Finally, the Highly Selective colleges are compared to Roman Catholic colleges. Here again there are fewer cases of Highly Selective schools since four of them were classified as Roman Catholic. The difference is somewhat less stark than with the above comparisons, but still appear significant. While 83.1 percent of the Highly Selective schools (40 out of 59) graduate at least half their class with 3.0 GPAs, 68.1 percent of the Roman Catholic colleges (94 out of 138) do so.

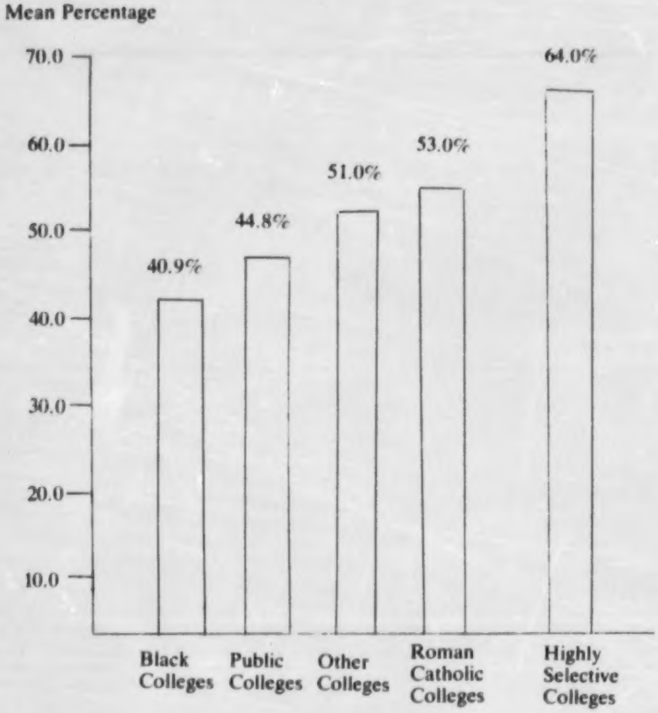
Table II-E summarizes the data presented in Tables II-A through II-D. As in Table II-B, "Other" includes only Private colleges which are not otherwise classifiable as Predominantly Black, Roman Catholic or Highly Selective. As in Table II-D, Roman Catholic schools which were also Highly Selective, have been carried within the Roman Catholic group.

3. *Comparing LSDAS-supplied GPA distributions with school-supplied GPA distributions for Predominantly Black schools and Highly Selective schools*

In comparing LSDAS-supplied GPA distributions with school-supplied distributions, it is important to remember at the outset that the school-supplied GPA distributions are, according to the *Guide*, more clearly representative of the individual institutions than are the LSDAS-supplied GPA distributions.[22]

Table III presents data from the 1979 *Guide* for Predominantly Black and Highly Selective schools. Twelve Predominantly Black colleges have school-supplied GPA distributions. For these schools, the mean percentage of GPA distribution at the 3.0 level and above is 30.1083%. Thirty-two Predominantly Black colleges did not have school-supplied GPA distributions, but had LSDAS-supplied GPA distributions averaging 45.4063% at the 3.0 level and above. If the LSDAS-supplied GPA distributions are used, or are the only GPA distributions available,

TABLE II-E
MEAN PERCENTAGES OF 1979
GRADUATES WITH GPAs OF 3.00 AND
ABOVE BY TYPE OF SCHOOL



obviously they will suggest a pattern of higher grade distribution than is demonstrated by the lower, and more reliable, school-supplied GPA distributions.[23]

Of the Highly Selective colleges, 39 have school-supplied GPA distributions. For these schools the mean percentage GPA distribution at the 3.0 level and above is 60.2103%. Twenty-six of the Highly Selective colleges did not have school-supplied GPA distributions, but had LSDAS-supplied distributions averaging 67.4885%.

Again, as with the Predominantly Black schools, if the only available data are the LSDAS-supplied GPA distributions, these will appear to suggest that grades are higher at the Highly Selective institutions than is actually demonstrated by the more reliable school-supplied GPA distributions.

The wide variation between the school-supplied and the LSDAS-supplied GPA distributions for both the Predominantly Black colleges and the Highly Selective colleges may well be, as the *Guide* suggests, the result of self-selection.[24] Unfortunately, whatever the reason for the wide disparity, it matters little when the end result is considered. As Table III shows, if an applicant is applying to law school from one of the Highly Selective institutions, there is at least a 60% chance that his or her institution has provided its own, more reliable, lower GPA distribution to the *Guide*. If, on the other hand, an applicant is applying to law school from a Predominantly Black college or university, there is only a 27.3% chance that his or her institution provided its own, more reliable, lower GPA distribution. Further, note that in the case of both Highly Selective college graduates and Predominantly Black college graduates, the LSDAS-supplied GPA distributions present a more inflated grade distribution picture than do the school-supplied GPA distributions. However, whereas the difference between school-supplied and LSDAS-supplied GPA distributions for the Highly Selective colleges is 7.2782% (i.e., 67.4885% means LSDAS-supplied less 60.2103% mean school-supplied), the difference between school-supplied and LSDAS-supplied GPA distributions for the Predominantly Black colleges is 15.298% (45.4063% mean LSDAS-supplied less 30.1083% mean school-supplied),—over twice as high as for the Highly Selective colleges.

While a cause and effect relationship cannot be implied here, given the differences in GPA distributions between the Predominantly Black schools and the Highly Selective schools and the greater percentage of Highly Selective schools which supply their own (lower) GPA distribution figures as compared to the number supplied by the Predominantly Black schools, it is worth pondering that while nearly half (45%) of all blacks earning college degrees graduated from Predominantly Black colleges,[25] over 75% of

TABLE III

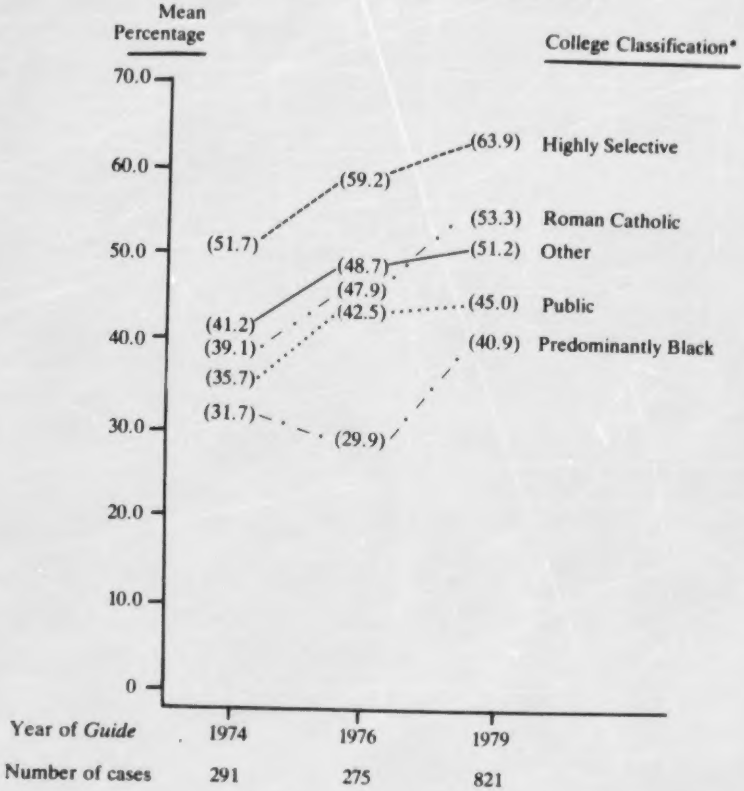
	Highly Selective:	No.	% of cases	% of cases	No.	Black	
Mean GPA distribution at 3.0 and above (school-supplied)	60.2103%	39	60%	27.3%	12	30.1083%	Mean GPA distribution at 3.0 and above (school-supplied)
Mean GPA distribution at 3.0 and above (LSDAS-supplied)	67.4885%	26	40%	72.7%	32	45.4063%	Mean GPA distribution at 3.0 and above (LSDAS-supplied)

black law students graduated from largely white undergraduate institutions.[26]

In short, not only are graduates from the Predominantly Black colleges less likely to graduate with a 3.0 average, they must also bear the additional burden that law school admission committees reviewing their credentials are far less likely to have access to information which accurately reflects the grading patterns at their colleges.

TABLE IV

MEAN PERCENTAGE OF GPAS AT 3.0 AND ABOVE BY TYPES OF COLLEGES OVER TIME



*These five classifications are the same as those for Table II-E.

4. *Comparing grade inflation trends among the five major college classifications*

Table IV shows trends in grade inflation from 1972 (the 1974 edition of the *Guide* gives cumulative information on school grade distribution patterns from the 1972 and 1973 graduating classes) through 1979. The mean percentages given in Table IV are school-supplied GPA distributions for the Roman Catholic, Other,[27] and Public school classifications. The percentages used for the Highly Selective and Predominantly Black schools reflect the average of their mean LSDAS-supplied and mean school-supplied distributions.[28] Finally, note that while the 1974 data shows a spread of 20 percentage points between the Highly Selective and the Predominantly Black schools, by 1979 the spread widens to 23 percentage points.

IV. PRELIMINARY FINDINGS

Initially, we must be cautious about any conclusions, in part, because the available data base is incomplete. Out of more than 1700 four-year undergraduate schools in the country, there are only 821 (48.3%) which have supplied their GPA distributions to the 1979 *Guide*. Likewise, of the 87 Predominantly Black colleges and universities, there are school-supplied or LSDAS-supplied GPA distributions for only 45 (51.7%). Fortunately the sample size available is approximately half the entire school population for each group.

Moreover, this study should not be interpreted to suggest, either directly or indirectly, any judgment, evaluation, or comparison of the quality of education offered at the Highly Selective colleges versus the quality of education offered at any of the colleges in the other classifications traditionally accorded less prestige. Obviously, the study also does not purport to comment on the comparative quality of graduates produced by any of the groups of colleges analyzed.[29] The grade distribution patterns are, however, strong enough to allow for the following preliminary conclusions, and to suggest a direction for future research and analysis.

First, grade inflation has occurred at undergraduate colleges and universities. While many educators may have suspected that grade inflation began 10 or even 15 years ago, the information in the *Guides* documents that grade inflation has most certainly occurred during the past eight years.

Second, grade inflation has not occurred evenly, nor to the same degree at all colleges and universities. When grade distributions are analyzed by college classifications, it is apparent that substantially higher grades are distributed at the Highly Selective colleges than at the Predominantly Black colleges. All other types of colleges fall somewhere between these two extremes.

Third, while graduates from Predominantly Black colleges applying to graduate and professional schools may have been prejudiced by the mere fact that they graduated from institutions traditionally accorded less prestige, they most certainly have been prejudiced by GPA comparisons with graduates of the Highly Selective schools. That is, the graduate in the fifth percentile (from the top) from "Mount Hilyard" will have a GPA of 3.8, whereas the graduate in the fifth percentile from "Lloydhouse" will have only a 3.2.

Fourth, the tendency of LSDAS-supplied GPA distributions to be considerably higher than school-supplied GPAs distributions, especially so for the Predominantly Black colleges, together with the absence of school-supplied GPAs from the majority of Predominantly Black colleges, compounds the initial disability applicants from Predominantly Black colleges face when comparisons are made with other college graduates. That is, the admission committee member considering the graduate in the fifth percentile from Mount Hilyard with the 3.8 GPA is more likely to have access to data supplied by the institution itself which will accurately describe the school's grading pattern; whereas the same committee member considering the graduate in the fifth percentile from Lloydhouse with the 3.2 GPA is likely to have the GPA distributions of only the (comparatively few) LSAT/LSDAS registrants from that school.

Next, the conventional wisdom has been that the more selective and prestigious the school, the more likely it is that tough grading standards are maintained and little, if any, grade inflation has occurred. Likewise, the same conventional wisdom holds that at the lesser known or less prestigious institutions, the grading standards are somewhat more flexible, if not downright easy, and more grade inflation has occurred.[30] To the contrary, this study demonstrates that the lesser known, less prestigious colleges are, as a group, more likely to have held the line on grade inflation.

Finally, the vast differences in grade distribution patterns between the Predominantly Black colleges and the Highly Selective colleges would appear to suggest that a bell curve does not necessarily exist at all educational institutions, or that, if one does, the "bulge" in the bell occurs at radically different points on the grading scale.

V. RESEARCH AND POLICY IMPLICATIONS OF THIS STUDY

Of what value is the information that grade inflation has occurred unevenly at different types of colleges and universities?

First, those involved in making the hard decisions created by the present abundance of professional school applicants now have additional information to use in assessing college GPAs. Once again the need for great care in relying on "the numbers only"—here, the GPA standing alone—in making admission decisions is underscored. The GPA is no more "hard" datum, in terms of measuring an applicant, than is the LSAT score. The study confirms that an applicant's GPA is related to, or can be substantially influenced by, the type of college he or she attended.

Next, registrars and deans at Predominantly Black colleges, as well as all others, should be actively encouraged to supply their own GPA distribution percentages to the *Guide* so that a more accurate picture of their grading patterns will be available to law school admission committees.

Third, cumulative-across percentages should be added to the box percentages which now appear in the *Guide*, to make grade distribution comparisons between undergraduate institutions easier. To illustrate, see Figure 4.

In the very least, information on the unevenness of college grade inflation should be made more readily accessible to graduate and professional school admissions committees.[31]

***

FIGURE 4

Percentage Distribution of Senior Class GPAs - 1973-74 (based on 206 students)

	4.00 & up	3.80 3.99	3.60 3.79	3.40 3.59	3.20 3.39	3.00 3.19	2.80 2.99	2.60 2.79	2.40 2.59	2.20 2.39	2.00 2.19	1.99 DOWN
	0	2.4	10.7	15.	12.6	20.9	16.	8.7	8.3	1.	2.	2.4
Total %:	0	2.4	13.1	28.1	40.7	61.1	77.6	86.3	94.6	95.6	97.6	100

As always it is far easier to study and explain what has occurred than to discover and explain why. The preliminary findings of this study strongly suggest some further areas of useful research which may be helpful in testing some of the following theories. Keep in mind that the theories posed are just that, theories nothing more, as to what has caused so marked a difference in the rate of grade inflation among different types of colleges, and most particularly, between the Highly Selective colleges and the Predominantly Black colleges.

First, faculties at Predominantly Black colleges tend to award lower grades in order to demonstrate to prospective employers and to graduate and professional schools that they maintain tough grading standards.[32]

A second theory is that faculties at Predominantly Black colleges are somewhat isolated from the rest of their professional colleagues, and thus are unaware of the current inflated trends in awarding grades elsewhere in academe.[33]

Third, grades are higher at other institutions, and highest of all at the Highly Selective colleges, than at the Predominantly Black colleges, because they have better students.[34]

A fourth possibility could be, in a sense, a reversal of the first theory posited. Faculties at the Highly Selective institutions perceive themselves as offering a more rigorous academic program and therefore feel obligated to give their students some sort of automatic handicap in awarding grades.

A less happy theory might be that faculty members at the Highly selective institutions have been more responsive to the pressures for higher grades converging on them from a number of sources: (1) their more sophisticated, game-wise students are articulate advocates for higher grades; (2) wealthy donors are unhappy when their children receive so-so grades; (3) or the tenure and promotion evaluation system includes student input and low grades do not buy much popularity.

Finally, the vast difference (15 percent) between the LSDAS-supplied GPA percentages and the school-supplied GPA percentages for Predominantly Black colleges, as compared to the lesser difference (7 percent) for the Highly

Selective colleges, may suggest that some fairly brutal self-selection is going on at the Predominantly Black colleges. Only the very best students from the Predominantly Black colleges are even daring to enter the law school applicant pool.

VI. CONCLUSION

Law school admission committees are in the business of allocating a scarce resource—the seats in the accredited law schools throughout the country.[35] Generally these allocation decisions have been made in large part by assessing the candidate's past performance both on the LSAT and in undergraduate school.

To date, law school admissions personnel have had a near total preoccupation with the validity, use, overuse and misuse of the LSAT. This preoccupation has tended to obscure concern for, or serious study into, the other most influential factor in the law admissions process: the college grade point average.

The purpose of this study has been to alert law schools to the unevenness in grade distribution among various types of colleges—the sharpest disparity occurring between Highly Selective schools and Predominantly Black schools—and to awaken interest in further analysis of the numerous factors, both tangible and intangible, which might affect an individual's final GPA. The GPA may be a function of the individual's major, the amount of time he or she had to devote to studying, the choice of professors, the existence or absence of financial worries, the existence or absence of family responsibilities, all of the above, and many other factors that may not ever surface in the admission process. This study reveals, however, that an applicant's GPA *is* related to or influenced by the type of college he or she attended. And that is one factor which should no longer be ignored.

APPENDIX

At Temple the grade distribution percentage information is used in two very modest ways. They are presented here merely to illustrate one school's admittedly simple approach to a complex problem.

First, in the regular (non-discretionary) admission process, "bonus points" are added onto an applicant's index for grade distribution percentage levels below 50 percent for 3.0 GPAs and above. The lower the school's percentage, the higher the number of "bonus points" given to an applicant from that school:

PERCENTAGE OF CLASS GRADUATING AT 3.0 OR ABOVE	NUMBER OF BONUS POINTS AWARDED
49-40%	25
39-30%	40
29-0%	50

The bonus points are added to the base index as the admission file is prepared and act as an "alert" to those persons reviewing the file that the applicant in question earned his or her GPA at an institution with comparatively underinflated grading practices.

Bonus points are not subtracted for applicants applying from colleges with GPA distributions of 50 percent or more at the 3.0 level and above.

In the Temple special admissions process (the Sp.A.C.E. Program), substantially less attention is paid to "the numbers" so that the review and evaluation of applicants from "underinflated" institutions is more subjective and discretionary. The lists of colleges and their GPA percentage distributions at the 3.0 level and above, described in Figure 3 *supra* are simply made available as a reference to all persons reviewing files, interviewing applicants, etc.

TEMPLE INDEX*

GPA (4.0) x 338		1352
LRPA** (4.0) x 112		448
LSAT (800) x 1		800
WA (80) x 5		400
BASE INDEX		3000
Bonus Points:		
Academic Honors	(up to)	50
Service (Peace Corps, Vista, military or equivalent)		50
Work during college	(up to)	50
Work after college	(up to)	50
college GPA distribution adjustment	(up to)	50
ADJUSTED INDEX		3250

*As the INDEX is presented here, it assumes the highest possible GPA, LSAT, etc., as well as the maximum number of "bonus points" for each factor.

**LRPA: The Last Reportable Period Average includes approximately one-third to one-half of the applicant's most recent level of academic work. For example, if the applicant is applying in the senior year of college, the LRPA will be the junior year; for the applicant with a Ph.D., the LRPA will be the combined M.A. and Ph.D. work.

ACKNOWLEDGMENTS

I am deeply grateful to Lawrence F. Carnevale and Joanna Dunn-Gray, the two best student research assistants anyone could have, who were given the worst possible assignment: Mr. Carnevale and Ms. Dunn-Gray painstakingly codified all the GPA distributions and school classifications so that a very patient Joseph Gannon of Boston College and the New Hampshire College Institute of Human Services could feed his computer night after night, week after week. Richard D. Lee of the Temple Law faculty waded through the first rough draft and offered much needed criticism; Sharon S. Harzenski, also of Temple, and Ralph R. Smith of the University of Pennsylvania Law faculty generously read each draft, asking hard questions and providing encouragement throughout the project. I hope I have properly incorporated each of their valuable suggestions. Thanks also to my administrative assistant, Ellen B. Frey, for her patience and daily support while the study was in progess. And a special thank you to Alyce Barry, Beth Fisher, Eleanora (Peatie) Jones and Lois Nemes who cheerfully typed the first rough draft and the even rougher second, third and fourth drafts.

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NOTES

1. Defunis v. Odegaard, 416 U.S. 312 (1974).

2. During 1977 and 1978, this author attempted a study of grade inflation for the decade 1968-78. At that time, numerous sources of possible data collection were contacted *inter alia*, the Educational Testing Service (ETS), the Department of Health, Education and Welfare (HEW), the American Council on Education (ACE), and several educational consultants. None knew of any national data collection prior to the 1971-72 *Guide to the Interpretation of Undergraduate Transcripts* (LSAC) (1973). One study by Michigan State Professor Arvo Juola showed that the national GPA average went from 2.4 to 2.8 between 1965 and 1974; however, only 149 colleges were included in the study. "When an 'A' Deserves a 'B'," *Newsweek* (September 29, 1979).

3. The 1974 edition of the *Guide* contains grade distributions for 631 schools reported by schools themselves and grade distributions for 304 schools based on 25 or more LSAT and/or LSDAS registrants from each school over the previous three year period. The 1979 *Guide* contains grade distributions from 946 schools as reported by the schools themselves and grade distributions for 444 schools based on 25 or more LSAT/LSDAS registrants from each school over the previous three year period.

4. All illustrations of individual colleges and universities in this report are real. However, ficitious names of such colleges and universities have been used to protect the innocent as well as the guilty. A transfer code from real to fictitious names is available on file at the Temple University School of Law Admissions Office. Requests from persons doing scholarly research will be honored.

5. (a) The admissions committees at Temple Law School were primarily interested in a comparison of GPAs for our applicants, the vast majority of whom had GPAs at the 3.0 level or above; (b) The members of our committees felt that they "knew" what a 3.0 average represented in terms of academic achievement. This reason is, obviously, strongly related to (c) below; (c) To those who had graduated from college in the early-to-mid-60's, the 3.0 average was a gut-level demarcation point; above it was academic responsibility; (d) If grade inflation were having an impact on our applicants' profiles, its effects were most observable and of greatest concern to us in the upper ranges of academic performance; (e) The author guessed that 3.0 would be somewhere in the high-to-middle grade distribution ranges for many schools. Four and a half years after the selection of the 3.0 focal point, it was not surprising to see that the mean percentage for all schools with GPA distributions at 3.0 or above for the entire 1979 data base was 50.187 and the median percentages was 49.250.

6. Because the *Guide* is now a two-volume set, measuring more than 6 inches collectively, and containing some 1600 pages, a list of colleges and their percentage of GPAs at the 3.0 and above level is far more portable.

7. "Potted ivy." The phrase is borrowed from Dr. Stephen Yale, Educational Consultant, Enrollment Analysis, Inc., Philadelphia, Pa.

8. Barnard, Bryn Mawr, Mount Holyoke, Radcliffe, Smith, Vassar, Wellesley.

9. A. Astin, *Predicting Academic Performance in College: Selectivity Data for 2300 American Colleges* (1971). Astin ranked schools from 1 to 7, with 7 being

the most "selective." Of the 2320 schools Astin evaluated, only 66 schools received a rating of 7, including the eight Ivy League institutions previously listed in the text at 7, *supra*, and the Seven Sisters, note 7, *supra*. The Astin 7s, in alphabetical order, are:

> Air Force Academy; Amherst; Barnard; Bates; Bennington; Boston College; Bowdoin; Brandeis; Brown; Bryn Mawr; Bucknell; California Institute of Technology; Carleton; Colby; Colgate; College of Holy Cross; Columbia; Connecticut College; Cornell; Dartmouth; Davidson; Dickinson; Duke; Georgetown; Grinnell; Hamilton; Harvard; Harvey Mudd; Haverford; Johns Hopkins; Kenyon; Lafayette; Lawrence University; Lehigh University; Massachusetts Institute of Technology; Middlebury; Mount Holyoke; Naval Academy; Oberlin; Occidental; Pomona; Princeton; Radcliffe; Reed; Rennselaer; Rice; St. Johns College, Maryland; Sarah Lawrence; Smith; Stanford; Swarthmore; Trinity, Connecticut; Trinity, District of Columbia; Tufts; Union, New York; University of California at San Diego; University of Chicago; University of Pennsylvania; University of Rochester; University of Washington; Vanderbilt; Vassar; Wellesley; Wesleyan; Williams; and Yale.

10. Hereafter, the name of each classification by school group, e.g. Highly Selective, Predominantly Black, Public, will be capitalized to clarify when these terms are being used to denote the classifications in this study, as distinguished from their use as ordinary adjectives.

11. A few universities which describe themselves as "Private" (e.g. Cornell and the University of Pennsylvania) receive substantial grants from their respective state boards of education. Nonetheless, we have included them in the report as "Private," based on their self-descriptions in the College Handbook.

12. *The College Handbook*, (M. Matheson, ed., 1979)

13. In 1979, the NAFEO members who were also in the College Handbook included the following four-year colleges:

> Alabama A & M University; Alabama State University; Albany State College (GA); Alcorn A&M University; Allen University; Arkansas Baptist College; Universityof Arkansas at Pine Bluff; Barber-Scotia College; Benedict College; Bennett College (NC); Bethune-Cookman College; Bishop College; Bowie State College; Central State University (OH); Cheyney State College; Claflin College; Clark College (GA); Coppin State College; Delaware State College; Dillard University; Edward Waters College; Elizabeth City St. University (NC); Fayetteville St. University; Fisk University; Florida A&M University; Florida Memorial College; Fort Valley State College; Grambling State University; Hampton Institute; Huston-Tillotson College; Howard University; Jackson State University; Jarvis Christian College; Johnson C. Smith University; Knoxville College; Lane College; Langston University; LeMoyne-Owens College; Lincoln University (MO); Lincoln University (PA); Livingstone College; Miles College; Mississippi Industrial College; Mississippi Valley St. University; Morehouse College; Morgan State University; Morris Brown College; Morris College; Norfolk State University; North Carolina A&T St. University; North Carolina Central University; Oakwood College; Paine College; Paul Quinn College; Philander Smith College; Prairie View A&M University; Rust College; Savannah State College; Selma University; Shaw College at Detroit; Shaw University (NC); South Carolina State College; Southern University at Baton Rouge; Southern University at New Orleans; St. Augustine's College; St. Paul's College (VA); Spelman College; Stillman College; Talladega College; Tennessee State University; Texas College; Texas

Southern University; Tougaloo College; Tuskegee Institute; University of Maryland (Eastern Shore); University of the District of Columbia (formerly D.C. Teachers College); Virginia State University; Virginia Union University; Voorhees College; Wilberforce University; Wiley College; Winston-Salem State University; Xavier University (LA).

14. For the purposes of this report, "minority" is defined in accordance with the American Bar Association (ABA) reporting procedures for Fall 1979, to wit: (1) Black not of Hispanic Origin; (2) American Indian or Alaskan Native; (3) Asian or Pacific Islander; and (4) Hispanic.

15. "Many institutions provided percentage distributions of GPAs for their senior class. The distributions are based on the cumulative four year GPA for seniors, not just the senior year GPA. Most were provided in the same format as the LSDAS distribution: those which were not are printed exactly as the institution submitted them. For those institutions which provided data, there is a good basis for comparison between LSDAS registrants and the total senior class. *In instances where discrepances appear between GPA distributions based on LSDAS registrants and those based on senior classes, the latter would usually be more representative of an institution's entire student body. It should be noted that the way in which the LSDAS calculates a GPA may differ slightly from the way the institution calculates it." Guide,* at ix (1979) (emphasis in original).

16. *Id.*

17. For the purposes of this study our interest was in comparing grade distribution patterns between different types of colleges, hence we determined to use only school-supplied percentage distributions. We did not anticipate any significant omissions from the school-supplied data base such as were later discovered in the Highly Selective colleges and in the Predominantly Black colleges. See note 19 *infra* and accompanying text.

A second study comparing LSDAS-supplied distributions with school-supplied distributions is currently underway. While this study may be of some interest to law school admissions committees, its results will not conflict with the present study or its conclusions, nor will it be of interest to other professional school or graduate admission committees or prospective employers.

18. One of the Highly Selective schools supplied the following grade distribution data: See Figure 5.

19. The absence of 38 Predominantly Black colleges and universities from the total of 83 occurs because these schools did not furnish enough LSAT/LSDAS registrants to meet the minimum 25 registrants over a three-year period upon which to base an LSDAS-supplied GPA distribution.

Before combining the LSDAS and school-supplied distribetions a test of mean differences was conducted. Inasmuch as the test produced a non-significant result in the case of the Highly Selective schools, combining the two sources of data represented no substantial problem. On the other hand a statistically significant difference in the means did occur between the Predominantly Black school-supplied and LSDAS-supplied data. Since the combined sources distorted the results in a way that would only be damaging to the hypothesis—that is the combined LSDAS- and school-supplied GPA distributions served only to lessen the differences between the two groups of schools—the results of the study overall was not impaired.

FIGURE 5

<table>
<tr><th colspan="14">PERCENTAGE DISTRIBUTION OF UNDERGRADUATE DEGREE GPA'S</th></tr>
<tr><td>4.00 and UP</td><td>3.80 3.99</td><td>3.60 3.79</td><td>3.40 3.59</td><td>3.20 3.39</td><td>3.00 3.19</td><td>2.80 2.99</td><td>2.60 2.79</td><td>2.40 2.59</td><td>2.20 2.39</td><td>2.00 2.19</td><td>1.80 1.99</td><td>1.60 1.79</td><td>1.59 and DOWN</td></tr>
<tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr>
<tr><td colspan="14">PERCENTAGE DISTRIBUTION OF SENIOR CLASS GPA'S
CLASS OF 1978–79 (BASED ON 301 STUDENTS) DATA SUPPLIED BY INSTITUTION</td></tr>
<tr><td></td><td>.5</td><td>.5</td><td>1.0</td><td>8.0</td><td>1.3</td><td>1.6</td><td>1.8</td><td>1.4</td><td>.9</td><td>.6</td><td>.5</td><td>AND</td><td>DOWN</td></tr>
</table>

20. The degree to which we can look at trends over the five-year period is limited, at least in this study, to those schools or types of schools for which we have grade distribution reports for all three years. Future research could yield valuable information by expanding the analysis to include the grade distributions in the 1973, 1975, 1977, 1978 and 1980 *Guides*. (The 1980 *Guide* was published after this study was completed.)

21. See note 5, *supra*.

22. See note 15 *supra* and accompanying text.

23. Because the LSDAS-supplied distributions are so much higher than the school-supplied distributions for the Predominantly Black schools, the combining of the two groups of data did not aid, but rather undercut the thrust of the comparisons.

24. "While the *Guide* should provide valuable assistance in understanding the meaning of undergraduate grades, LSAT scores, and writing ability scores from many institutions, it has distinct limitations and should be used in the light of the following cautionary statements:

    1. The information derived from LSAT and LSDAS files is based on students who *chose* to enter the LSDAS and/or to take the LSAT. In addition, applicants to law school are not representative of all the students at a college, nor in fact is it necessarily true that law school applicants represent the same segment of the student body from school to school. In some colleges law school applicants may be the best students, whereas in others the best students may be guided toward some other field, leaving law school applicants to be drawn from those of more nearly average ability. Therefore, because of this and because the number of candidates from some institutions may be small, one should not attempt to rank order the quality of colleges based on these data alone." *Guide* at ii (1974) (emphasis added).

    A similar caveat is repeated in the 1976 *Guide* at ii: "The information derived from LSAT and LSDAS files is based on students who chose to enter the LSDAS and/or to take the LSAT. In addition, applicants to law school are not representative of all the students at a college, nor in fact is it necessarily true that law school applicants represent the same segment of the student body from school to school. In some colleges law school applicants may be the best students, whereas in others the best students may be guided toward some other field, leaving law school applicants to be drawn from those of more nearly average ability. *Therefore, because of this and because the number of candidates from some institutions may be small, one should not attempt to rank order the quality of colleges based on these data alone.*" (emphasis in original.)

25. Brief of the Law School Admission Council as amicus curiae at 11, Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265 (1978).

26. Boyd, "Legal Education: A Nationwide Study of Minority Law Students 1974," 4 Black L.J. 527, 528 (1975).

27. The classifications are the same as for Table II-I.

28. See note 23 *supra* and accompanying text.

29. See note 30 and accompanying text and the discussion generally at 29-31.

30. Anecdotically, these statements of "conventional wisdom" are based on numerous discussions the author has had with a number of admission comittee members and LSAC representatives throughout the past five years. The discussions were initiated, in part, for the purpose of learning whether knowledgeable persons actively involved in the law school admission process were aware of the degree of uneveness in college grade distributions.

31. The degree to which uneven grade inflation data can be used in some concrete manner or in some subjective way, in the admissions decision-making process should, of course, be determined by individual school admission committees. For example, over the last four a half years, this information has had an impact on the Temple Law School admissions committee members. Their comments or suppositions about the "high or low quality" of a given institution are now balanced and weighed against inquiries about the same institution's "inflated" or "underinflated" grade distribution pattern. By way of illustration, the manner in which grade distribution data is used, albeit modestly, at Temple is presented in the Appendix.

32. D. White, An Investigation into the Validity and Cultural Bias of the Law School Admission Test §III-D-1 (1980).

33. By way of illustration, it was reported to the author that a black faculty member at a New England college, newly arrived from a Predominantly Black college in the South, remarked that she had never heard the expression "grade inflation" until coming to the largely white New England college.

34. This third hypothesis is an attractive and simple theory. In its simplicity, however, it fails to acknowledge several competing realities. For example the argument fails to acknowledge that many schools, even the most selective, have their fair share of athletes, alumni/ae children and children of wealthy donors who are not necessarily admitted solely on the basis of their scholarly achievement or potential. Second, the theory does not recognize that students of limited financial means (including the majority of black, other minority and many first and second genration American college students) may elect to attend or be forced to attend college where costs are lower than at the more selective colleges. Third, the theory does not consider that persons who are older than the average age of 18 for entering college will be more likely to have families whom they are reluctant to ignore or to uproot, thus mandating attendance at local, and usually less prestigious, community or state colleges and universities. Next, this theory does not allow for the many children who select a college based on where a parent or family member attended. And finally, the theory fails to recognize that black high school students may simply choose to attend Predominantly Black colleges.

    At this point, a note of caution should be added with respect to evaluating the performance of minority students at prestigious (Highly Selective) and largely white institutions, given what we now know about the inflated GPA distributions at these schools. While the author has not done a statistical evaluation of the academic records of such applicants, a consistent impression gained from observing many such records is that there is a striking pattern of a poor first year followed by increasing academic achievement thereafter. Unfortunately, the freshman "period of adjustment," if poor enough, will impair the overall GPA, despite dramatic improvement in the sophomore and junior years. To illustrate the pattern: a 2.25 for the freshman year followed by a 3.0 for the sophomore year and a 3.5 junior year, still leaves the applicant with a less than stunning 2.92 overall GPA by the time he or she is ready to file a law school application. What accounts for a 2.25 performance from a student with obviously far greater academic potential, as demonstrated by the latter years' record? It is not fantasy to suppose that for minority students from lower economic income groups, whether home is Newark, New Jersey, or Sillacauga, Alabama, the first year at "Ivy Hall University" is a shock. One Temple Law student described it succinctly: "All systems (i.e. intellectual, social, cultural, environmental and—for those from the South—gastronomical) are *lonely*!"

35. The recent Report of Joint Committee on the Demand for Legal Education in the 1980's, by the Association of American Law Schools and Law School Admission Council (July 10, 1980), notwithstanding.

Innovative Models for Increasing Minority Access to the Legal Profession

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I. INTRODUCTION

The Mexican American Legal Defense and Educational Fund has, for the past eighteen months, been conducting a study to develop alternative admissions models which will facilitate minority access into law school and eventually improve the chronic underrepresentation of blacks and Hispanics in the legal profession. The grant for the study, as funded by the Fund for the Improvement of Postsecondary Education (FIPSE), provided only sufficient funds to collect questionnaire data on admissions procedures of ABA-approved law schools in California, which represent a highly diverse law school community. Consequently, the criteria which were developed are equally applicable nationally to approved law schools. Moreover, the research on which the alternative admissions models are based derives from a thorough review of national materials on current admissions procedures, testing, psychometrics, and other germane information.

Currently, the models are being disseminated to law schools and legal organizations throughout the country for the purpose of test-piloting with data drawn from applicant pools for each school. We will, of course, monitor the progress in using our guidelines to develop new criteria that result in increased minority admissions. Finally, the staff of the project, with direction provided by a distinguished advisory panel of prominent legal figures, is formulating national strategies for ensuring efficient implementation of alternative admissions models which emphasize the continued importance of minority access to the legal profession.

The alternative admissions models which MALDEF has generated seek to assist persons of racial/ethnic background in gaining access to law schools in order to prepare a substantial number of minority attorneys for positions of influence and power in society. Effective participation of minorities in the legal profession remains a goal to be achieved, as is well attested by extensive data corroborating the underrepresentation of minorities in legal education and the profession.

In the academic year of 1978-79, for example, the American Bar Association survey conducted by Dean James White documented that only eight percent of all students pursuing legal studies in ABA-approved law schools were racial/ethnic minorities[1] — this figure represents a decade of slow progress for Blacks, Hispanics and other groups. Data from the 1978 *Statistical Abstract of the United States* show that while racial/ethnic minorities constitute over 19.4 percent of the total United States population, only 3.2 percent of the employed lawyers and judges are blacks and other minorities.[2]

In 1978, Felicenne Ramey concluded a survey of minority attorneys in California. Her findings, as published in the *Los Angeles Daily Journal*, November 17, 1978, established that in 1975 there were 1,696 minority attorneys in the state, a figure representing only 3.8 percent of the total attorney population in California. More importantly, according to the Ramey study, the percentage of minority attorneys in California has declined since 1970 even though the absolute number of minority attorneys has risen. This phenomenon of course, is due to the even more rapidly rising majority-culture attorney population. The Ramey study also produced the following lawyer to population ratios for various ethnic and racial groups:

Group	Ratio of Lawyer/Population
Hispanic	1:5158
Black	1:2098
Asian	1:896
White	1:367

This data reveals an anachronistic view of law and the legal system which flies in the face of basic human rights, legal justice, and demographic realities; it is projected, for example, that by 1991 California may well become the first state in which racial/ethnic minorities will collectively constitute a new majority.[4] Thus, the ample statistics of underrepresentation of minorities in legal preparation and the profession underscores a desperate need for a coordinated national program of research and advocacy which will correct this unconscionable imbalance.

II. PROJECT METHODOLOGY

Methodology for the study that MALDEF conducted to respond to the need for increased minority access to law consisted of three basic lines of investigation: 1)an extensive state of the art literature review was completed on all pertinent materials regarding admissions; 2)informal interviews were conducted at all fifteen ABA-approved law schools in California to obtain information on the current admissions process and its operation; 3)and a formal survey instrument was mailed to the ABA law schools in California. This questionnaire instrument elicited detailed data on the criteria and weighting which schools currently use to evaluate candidates for admission, the composition and structure of the admissions committee, student participation in the admissions process, mean and/or median test scores and grade point averages for regular and specially admitted students, the numbers of racial/ethnic minorities enrolled in the schools, any changes in admissions procedures post-*Bakke*, the extent of recruitment of both minority and majority candidates, what if any supportive services a school offers, and bar passage information.[5]

The scientific models which were developed in the study will assist law schools in updating their admissions criteria in accord with exemplary practices and latest research results. Our study revealed that most law schools are and have been using criteria in addition to the traditional numerical indices of college grade point average (GPA) and the Law School Admission Test (LSAT), at least to some extent, though certain schools still weight the LSAT seventy percent in combined formulas used for initial applicant screening. The analysis of MALDEF's questionnaire indicates, however, that factors apart from GPA and LSAT are often evaluated in a non-systematic or haphazard fashion which may raise issues of arbitrariness, bias or deprivation of due process. By disseminating information about the study and the alternative admissions models developed, MALDEF is pursuing a soundly researched advocacy approach for minority admissions in law schools. The national strategy for disseminating our results is based on a continuing cooperative relationship with law faculty and administrators who are reviewing and test-piloting the published models.

As a synthesis of the chapters in the Law School Admissions Study (MALDEF, 1980) demonstrates, it is defensible if not psychometrically mandatory for law schools to consider factors apart from test scores and grades in their admissions process. Moreover, most schools prior to and subsequent to *Bakke* have been following procedures similar in substance, if not in form, to the one challenged at Davis Medical School. MALDEF's report and developed models simply urge a more overt and systematic continuation of admissions models which evaluate numerous applicant traits, especially as they relate to allocation of the scarce resource of first year places in law school among different racial and ethnic groups.

III. SYNTHESIS OF THE LAW SCHOOL ADMISSIONS STUDY

The first chapter of the Study sets forth the basic premise that there is a definite policy decision, implicit or explicit, in every existing admissions model.[6] This is to say that law schools, by virture of their admissions criteria, have chosen to reward specific traits; the commonly evaluated characteristics are, of course, grade point average and LSAT scores. However, some institutions seek individuals of varied backgrounds who can offer both the law school and the legal profession contributions that cannot be measured by purely cognitive indices. Obvious characteristics which could be deemed of import in applicant evaluation for law school are: racial and ethnic background, work experience, bilingualism, demonstrated commitment to legally underrepresented sectors of the community, evidence of having overcome hardship, evidence of having overcome educational and economic deprivation, demonstrated motivation and perserverance.

Our point is that schools should clearly articulate the policy underlying their admissions criteria and carefully relate all factors used for candidate evaluation to their stated admissions policy. The policy, moreover, should be related to demographic, constitutional and moral realities. Thus, the concluding thought of the introductory chapter is that the *Bakke* decision should appropriately be viewed as an opportunity to discover the breadth of admissions models which are constitutionally permissible and which will increase the diversity within the law schools, particularly racial and ethnic representation.[7]

The second chapter of the report addresses the dimensions of the admissions issue. Briefly, these consist of an extraordinarily high demand for admission to law school in the mid-1960s only beginning to abate somewhat now, coupled with the first significant influx of minority applicants to law school. Between the years 1967-68 and 1971-72, for example, the number of persons taking the LSAT increased 140 percent while the number of first year places in law school increased by only 47 percent.[8] There were twice as many applicants for first year places in law school in 1975 as there were places in ABA-approved law schools.[9]

Minority persons, were, of course, caught squarely in this epoch of unprecedented competition. To handle the volume of applicants and to facilitate the task of choosing between a plethora of qualified applicants, law schools began placing exaggerated reliance on numerical indices, particularly the LSAT. The effect was to exclude persons, many of them minority applicants, who would have undoubtedly been accepted under regular admissions criteria a few years earlier.

For example, in *The Bakke Case: The Politics of Inequality*, Dreyfuss and Lawrence cited representative data concerning Boalt Hall law school. In 1961 the LSAT was required at Boalt only if an applicant had less than a B average, even then a 500 would suffice for admission; in

1967 the median LSAT score had increased to 638 and by 1976 the median score was 712, with a median GPA of 3.66. Everyone, including the deans of the four public California law schools who filed an *amicus* brief in the *Bakke* case, recognizes that the requirements for gaining entrance to most law schools have far surpassed those which would be prerequisites for a confident prediction of success in law school and in legal practice.[10]

This was the competitive climate at the time that the majority of blacks, Hispanics and other racial/ethnic groups began seeking entrance to law school. The use of the LSAT, as discussed in the third chapter of the Study, came to be the bane of many racial and ethnic minorities seeking admission to law school. As the widely cited study conducted for the Law School Admission Council by Evans concluded: had blacks and Chicanos been evaluated solely on the basis of numerical indices for the 1976 admissions year, blacks would have been admitted in numbers equal to only between one and two percent of the law student population and Hispanics would have comprised only between .4 and .8 percent of the law students.[11] MALDEF's own questionnaire which was distributed to the ABA-approved law schools in California revealed the following disparities between the mean LSAT scores of regularly admitted and specially admitted students, most specially admitted students presumably of racial or ethnic backgrounds:

Mean LSAT Scores at ABA-Approved California Law Schools 1978-79 Results of MALDEF Questionnaire[12]

School	Regular Admittees	Special Admittees
1	510	—
2	650	497
3	696	623
4	no data	
5	612	456.8
6	590	479
7*	665	612
8	616	—
9	593	501
10	734	665
11	627	521
12	698**	546.5
13	571	—
14	537	—
15	645	—

*No mean given, only median
**Cannot tell if Regular Admittee figure is median or mean

As the accompanying report on the LSAT demonstrates in section III-C, the differential between minority and majority group GPAs is much less than the disparity in LSAT scores. Moreover, aside from the issue of inherent cultural bias in standardized examinations, it is fair to state that the LSAT has been and continues to be misused as an evaluator for admission to law school. The test was not intended to be utilized as the ultimate criterion of who should gain admission to law school; rather, it was designed in 1948 during a period of very high attrition at most national law schools.[13] The LSAT, if valid at all, is certainly not properly used for making fine distinctions between candidates.[14] Nor does it purport to have particular validity above intermediate scores.[15]

The Law School Admission Council, in recognition of blatant misuse of the LSAT by many law schools, issued in 1978 Cautionary Policies Concerning Use of the Law School Admission Test, the Law School Data Assembly Service, and the Law School Candidate Referral Service concerning proper test use. Some of the important caveats include: avoid improper use of cut-off scores; do not place significance on score differences; do not use the LSAT as the sole criterion for admissions; and do not use LSAT scores without an understanding of the limitations of such tests.[16] The data which MALDEF obtained through its questionnaire to the California law schools estalish that a number of schools use cut-off scores despite the LSAC Cautionary Policy Guidelines which strongly discourage the use of minimum test scores, especially where utilization of cut-off scores has an adverse impact on applicants from minority groups.

Data from the questionnaire further document that schools do make distinctions between test score differences which are statistically insignificant in order to make admissions decisions about candidates. Several schools stated that they weight the LSAT seventy percent or more in initial candidate evaluations—a practice that could be tantamount to using the LSAT as the sole criterion for admissions since no grade point average or additional candidate information, no matter how outstanding, would counterbalance a relatively low LSAT. Finally, a good argument can be made that very few persons understand the limitations of standardized tests well enough to be able to use them correctly as applicant evaluators.

An analysis of the data gathered through the questionnaire which MALDEF distributed to the ABA-approved law schools in California is contained in the fourth chapter. Apart from the information already discussed, some of the salient points are that minority enrollment in Califonia law schools peaked in the 1973-74 academic year at 18 percent, was down to 14 percent in 1978-79, and increased slightly to 15 percent in 1979-80. It must be underscored that most of this enrollment was attributable to special admissions programs. In turn, the necessary reliance on special admissions programs, with all that the term connotes, is attributable, in great part, to the overreliance that many law schools placed on the LSAT. Our information reveals that the LSAT, in Califonia, is weighted any place between forty and seventy percent in the admissions process.[17]

Other noteworthy data extracted from the questionnaire are as follows:

- approximately 62 percent of the schools utilize some sort of automatic admissions procedure based on a candidate's LSAT and GPA;
- none of the schools require an interview as part of the admissions process, though some will schedule informational meetings with applicants to answer questions;
- student participation in admissions, if any, is generally limited to making recommendations without voting power;
- supportive services varied widely with only 31 percent of the schools offering faculty level tutorial involvement;
- given the practices of admissions committees in law schools as indicated by the questionnare data, there is no reason to believe that minority access to the legal profession will increase without a change in admissions policies.

An analysis of *Bakke* is contained in the fifth chapter of the Study. Because *Bakke* has been the subject of countless and extensive legal analyses, suffice it to say that we view the decision, even pursuant to the most conservative interpretation, as permitting a wide variety of admissions matrices. Certainly race and ethnicity, as well as other factors, may be evaluated in the admissions process as long as no individual is absolutely precluded from consideration due to race.[18]

IV. ALTERNATIVE ADMISSION MODELS

With the foregoing considerations in mind, the Law School Admissions Study has generated three basic admissions models and a pilot study which may be replicated by individual law schools. All of our models make some use of the LSAT since it remains an ABA prerequisite, yet all models deemphasize the importance of the test score, as compared with the admissions procedures currently in use at the majority of the law schools. The models are meant to be test-piloted and adapted by different law schools in keeping with their institutional goals and unique characters.

CULTURAL DIVERSITY MODEL

Rationale of the Diversity Model

The cultural diversity model directly responds to and satisfies the constitutional import of *Bakke*. As Justice Powell observed:

> Thus, in arguing that its universities must be accorded the right to select those students who will contribute the most to the "robust exchange of ideas," petitioner invokes a countervailing constitutional interest, that of the first amendment. In this light, petitioner must be viewed as seeking to achieve a goal that is of paramount importance in the fulfillment of its mission.[19]

Not only is diversity a compelling constitutional interest, but the diversity formula set forth in this model capitalizes on the established admissions procedures and student composition of each law school, thereby according utmost deference to traditional university autonomy while satisfying first amendment rights.

Further, the cultural diversity model recognizes and resolves the perplexing fact that diversity, in the sense of meaningful racial and ethnic diversity, will not exist in the absence of admissions models which expand from the traditional cognitive criteria of GPA and LSAT. Franklin Evans of the Educational Testing Service documented that:

> If the nation's law schools were to adopt an admissions policy taking no account of minority backgrounds of blacks and Chicanos, a majority of the students from those groups now admitted and enrolled would be excluded. . .If numerical predictors were employed exclusively for all applicants, the resulting reductions would be 76 to 78 percent for blacks and 45 to 48 percent for Chicanos.[20]

Yet there is no statistical, constitutional, or moral reason to limit admissions criteria to strictly numerical indices. On the contrary, the studies cited in Chapter III of the Study indicate that cognitive scores are likely to be misused against all applicants if isolated from other relevant candidate data.

This diversity model provides other relevant factors for applicant evaluation. It has the important feature of adjusting the weight accorded to an applicant's cultural diversity on the basis of the racial/ethnic enrollment in that particular institution. Applicants who are underrepresented will automatically receive more weight on the cultural diversity part of the formula than will candidates who are already well represented at the law school. Thus, the "robust exchange of ideas" which Justice Powell found compelling will be achieved without quotas and within the framework of a formula which is relatively simple and administratively feasible. Moreover, this model, by virtue of its noncognitive components other than LSAT and GPA, encompasses diversity characteristics apart from race and ethnicity.

Description

The purpose of this model is to provide a systematic procedure focusing on characteristics which research demonstrates may be useful in evaluating candidates for graduate and professional schools.[21] Although these characteristics are particularly relevant to minority candidates, they can be used as criteria to gain additional information on all applicants.[22]

The elements of our cultural diversity model are expressed by the following formula:

(NC (noncognitive) score + C (cognitive) score) x CD (cultural diversity) score = AS (applicant score)[23]

This formula describes a procedure for law student selection which gives weight to cultural diversity based on the existing racial/ethnic composition of a particular law school and, hence, increases the chance of minority student selection. Moreover, the criteria are keyed to the philosophy that excellence in education is promoted when criticam numbers of individuals with varying characteristics are recruited for professional school.[24]

As designed, the cultural diversity formula may be implemented in one of two ways. Pursuant to a unitary admissions approach, the formula may be applied to every law school applicant to a particular institution. In the alternative, a predetermined percentage of students may be admitted under the existing criteria of a law school with the remaining applicants being evaluated on the basis of the noncognitive and diversity factors which follow.

Dr. William E. Sedlacek, developer of the model, suggests that, for administrative reasons, 50 percent of law applicants to a particular school be admitted under the school's established criteria. This percentage, of course, could be adjusted by any school, in keeping with the HEW guidelines on Title VI, according to its own numerical targets and/or prior experience in minority enrollment.[25] If 50 percent were admitted traditionally, then the remaining 50 percent would be chosen based on the above formula which seeks to foster true diversity in entering law classes. Although the cultural diversity and noncognitive components of the formula may be adjusted by different schools based on thier test-pilots of the model, the essential procedure for implementation is as follows:

Implementation Procedure

1. Select 50 percent of the entering class using traditional methods (GPA, LSAT, letters of recommendation, etc.). In the alternative, omit this step and evaluate all applicants as detailed in steps 2 through 5.

2. Develop a composite score for all applicants, or the remaining 50 percent, on the following eight noncognitive variables. These variables are scored on a scale of 1, 2, or 3 points, with 3 being the highest. Data to achieve scores may be obtained from letters of recommendation, personal statements, interviews, etc. They are variables which admissions personnel and committees must scan for, since they could be contained anywhere in the applicant's record. All are supported with research as to their utility, particularly for racial/ethnic groups, but for whites as well.[26]

   a. Noncognitive variables:
      1. Self-concept.
      2. Realistic self-appraisal.
      3. Understanding racism.
      4. Long-range goals.
      5. Availability of a strong support person.
      6. Leadership.
      7. Community service.
      8. Demonstrated legal interests.[27]

   b. The highest score otainable is 8 x 3 = 24, while the lowest is 8 x 1 = 8. Develop a distribution of these scores for all candidates, or the remaining 50 percent, and convert these scores into T scores which have a mean of 50 and a standard deviation of 10. A T score is merely a statistical method for equating scales which are not equivalent.[28] The resulting score, in this component of the formula, is called the NC or noncognitive score.

3. Develop a distribution of the remaining applicants based on the traditional cognitive variables (GPA and LSAT) used by an institution in ranking and selecting admittees. This distribution, as discussed previously, will contain either all candidates or the remaining 50 percent of the applicants after the first 50 percent were admitted pursuant to established criteria. The goal is to develop a distribution based on a single composite ranking of the cognitive variables for each applicant. This distribution, as the noncognitive distribution, will be converted into T scores

and will represent the C or cognitive score. For hypothetical examples of conversions of student GPAs, LSATs, and noncognitive traits into T scores, please refer to Addendum B at the end of this model.

4. Depending on the admissions procedure chosen by the institution, cultural diversity scores will be assigned to all students or to those remaining after a specified percentage were admitted by the existing criteria of a law school. For a cultural diversity score to be assigned, however, there must be some external norm against which the weight of the score is determined; this is so because the purpose of the diversity model is to automatically adjust the weight each racial/ethnic group receives in evaluation for admission based on the representation of that particular group in a specific law school. The model, therefore, facilitates law school access for those groups least represented in a given law school by assigning them a higher cultural diversity score.

The HEW "Nondiscrimination Policy Interpretation" on Title VI as discussed in Chapter V of the study, permits a university to establish a numerical target for ethnic/racial minority admissions. Certainly a law school could use some numerical target or even last year's actual enrollment, as broken down by race and ethnicity, to establish a benchmark against which to measure applicants for cultural diversity. Cultural diversity scores then, are calculated as follows:

Institutional Composition

Less than 10 percent of the applicant's racial/ethnic group is represented (a) in the 50 percent of the class already admitted under established criteria or (b) in the student body of a particular law school or (c) by some other benchmark for assigning cultural diversity scores.	1.5
Between 11 and 50 percent is represented.	1.25
More than 50 percent is represented.	1.0

5. Final selection is made pursuant to the following formula:
   a. (NC score + C score) x CD score = AS
   b. Those individuals with the highest score are selected for admission.

Conclusion

The cultural diversity model is inherently fair in that every applicant is compared against every other applicant on the basis of cognitive, noncognitive, and cultural diversity traits. If the model is not applied to all applicants, it is still fair since every applicant not admitted pursuant to the traditional criteria of the law school must compete individually with every other applicant not admitted by the established criteria. The criteria utilized in this model, moreover, are indisputably within the letter and spirit of *Bakke*, as articulated by Justice Powell, in that applicants are assessed on a multitude of traits in an effort to achieve true diversity within the law school. Cultural diversity is not assigned a fixed weight nor is it implemented by arbitrary quotas. Rather, applicants are individually evaluated for cultural diversity, among other traits, based on the specific cultural composition of the law school to which they are applying. Finally, the cultural diversity component of the model is adjusted automatically in the admissions process according to the percentage of particular racial/ethnic groups already represented in the institution.

ADDENDUM A

Below is a description of the weighting of the scale values for each of the components that make up the NC score.

1. *Positive Self Concept*
   (Strong self-feeling; strength of character. Determination, independence.)

Meaning	Code Points
Initiates statements of behaviors that indicate strong positive feelings about oneself, e.g., "I felt I could do well on a project so I took extra initiative." Took heavy course-loads in school. Willingness to try new things over a long period of time.	3
Some evidence of positive feelings or behaviors but not strong. Some good evidence, some bad. Does *not* take initiative in trying new things or presenting evidence of self-worth; or only recent evidence of good self-concept.	2
Show no evidence of good self-concept or negative evidence. No evidence of trying new things; statements of expected failure made.	1

2. *Realistic Self-Appraisal*
(Especially academic. Recognizes and accepts any deficiences and works hard at self-development. Recognizes need to broaden his/her individuality.)

Meaning	
Presents clear evidence of assessing shortcomings in his/her background and *has taken steps* to overcome. Could be curricular or personal, e.g., "I knew that I was short in math so I took an extra course." "I *was not* effective in dealing with colleagues so I sought them out for reasons why."	3
Some recognition of some shortcomings but has generally not taken action to correct.	2

	Code Points
No evidence that shortcomings recognized; defensive or avoids questions concerning possible problem. Covers up and offers excuses.	1
3. *Understands and Deals with Racism* (Realistically based on personal experiences of racism. Is committed to fighting to improve existing system. Not submissive to existing wrongs, hostile to society, or a "cop-out." Able to handle racist system.)	
Meaning Initiates realistic explanations of how racism (particularly institutional racism) affects life. Not bitter. Understands that *some* of his/her life is controlled by the system based on race or sex and some is individually determined. Evidence of successfully handling interracial and/or intersexual situations, e.g., "I expect that some people may not understand modern women, but I had one supervisor who came around after I let him know what I could do."	3
Some good evidence, some not so good or tentative. Not a full understanding. May be bitter or confused.	2
No understanding of racism, hostile, resentful. Blames everything on the system being aginst Hispanics, Blacks, etc., if a minority. Feels resentful of reverse discrimination if white. No demonstrated method of handling interracial or intersexual situations well.	1

4. *Prefers Long-Range Goals to Short-Term or Immediate Needs*

(Able to respond to deferred gratification.)

Meaning	Code Points
Consistent evidence of planning and future orientation over a long period, e.g., "As a freshman, I figured I had better study if I wanted to get into law." "I realized I had to learn X procedure on the job before I could get promoted."	3
Some recognition of long-term goals but no long-term evidence, or mixed evidence.	2
No evidence of long-term planning; looks at issues in immediate terms, unprepared for future.	1

5. *Availability of Strong Support Person*
(To whom to turn in crises.)

Meaning	
Someone has provided assistance in times of crisis. Generally same person or one at a time sequentially, e.g., grandmother, then teacher, then boss, etc. Knows where to go in a crisis.	3
Sometimes has received help but not consistently; somewhat unclear about where to go in crisis.	2
No evidence of turning to others, loner, tough it out. Then says no problem.	1

6. *Successful Leadership Experience*
(In any area pertinent to background, e.g., gang leader, sports)

Meaning	Code Points
Behavioral evidence of influencing others in the context of his/her cultural or socialized background (may not be traditional, e.g., gang leader, unusual hobby, or community work). Has shown evidence over a period of time.	3
Some evidence of leadership position. Not clear what his/her influence really was, may list offices held in student or other organization.	2
No evidence of influencing others or holding office. May avoid or be uncomfortable in leadership role, e.g., "Let others do it—I'm too busy."	1

7. *Demonstrated Community Service*

Meaning	
Behavioral evidence of activity and identification with community. Long-term involvement and interest. Community must be allowed to be cultural/racial as well as geographical.	3
Some contacts with community but may be just recent, or perhaps, more likely, in the past with an uncertain present and future.	2
No contact with community. Little or no evidence that he or she is aware of the concept or its importance. Alienated, separated from cultural/racial background.	1

8. *Demonstrated Legal Interests*

Meaning	Code Points
Behavioral evidence of activity and interest in the law and legal issues for some time. Interest may be through one's culture, bettering one's culture through the law, etc. Allow for nontraditional view of legal interest.	3
Some behavioral evidence of legal interests but not strong or long-term.	2
No evidence of interest in law or legal issues, or perhaps avoidance of such issues.	1

ADDENDUM B

Applicant A

Description: White, high grades and LSATs but not involved in activities. Shows performance in traditional ways in classroom.

GPA = 3.6 = T score of 65

LSAT = 750 = T score of 75

Computation of C score:

The school evaluating Applicant A weights GPA 50 percent and LSAT 50 percent. Thus, we can simply get the mean of the two T scores (65+75) / 2=70. (C=70).

Computation of NC score:

Applicant A scored as follows on the eight noncognitive variables making up the NC score:

Self concept = 2	Leadership = 2
Realistic Self-appraisal = 2	Community = 1
Understands racism = 1	Demons. legal interests = 3
Long-range goals = 2	Strong support person = 1

The sum of these eight scores is 13. If we compare this to a distribution of these scores from all applicants to the school, we get a T score of 40 or 1 standard deviation below the mean. This person would be at the 16th percentile, or the lowest 16 percent of the applicants on NC. (NC=40).

Computation of CD score:

Based on applicant's race applicant receives a 1 for being in a group that represents more than 50 percent of the applicants. The reference group here could be the current year's applicants, last year's admittees, residents in the area, etc. The weights assigned to cultural/racial groups as of this date are: 1=more than 50 percent represented; 1.25=11 to 50 percent represented; 1.5=10 percent or less represented. (CD=1).

Computation of application score (AS):

AS=(70+40) x 1 = 110.

Applicant B

Description: Chicano, average LSAT and grades, but shows good performance in many areas outside the traditional educational setting.

GPA = 2.9 = T score of 45

LSAT = 450 = T score of 38

Computation of C score:

The T score for GPA and LSAT are based on the applicant pool of the school involved. The school evaluating applicant B weights GPA two-thirds and LSAT one-third. Thus. C=(45+45+38)/3=42.67.

Computation of NC score:

Applicant B scored as follows on the eight noncognitive variables making up the NC score:

Self-concept = 2
Realistic self appraisal = 2
Understands racism = 3
Long-range goals = 3
Strong support person = 2
Leadership = 2
Community = 3
Demons. legal interest = 2

The sum of the noncognitive variables is 19. If we compare this score to a distribution of all applicants we get a T score of 66 for the NC component. (NC=66).

Computation of CD score:

There were 11-50 percent Chicanos in the reference group employed by the school. (CD=1.25).

Computation of applicant score (AS): AS = (42.67 + 66) x 1.25=135.83.

Applicant C

Description: Black, low grades and LSATs, few activities and performance in areas outside eduction.

GPA = 2.6

LSAT = 370

Computation of C score:

The school evaluating Applicant C does not specifically weight GPA and LSAT, but makes an overall assessment of academic qualifications and ranks all the applicants to this school. Applicant C was in the lowest 20 percent, the T score equivalent of 30. (C=30).

Applicant C scored as follows on the eight noncognitive variables making up the NC score:

Self concept=2
Realistic self-appraisal=1
Strong support person = 1
Leadership = 1

Understands racism=1	Community = 1
Long range goals=2	Demons. legal interests = 2

The distribution of applicants yielded a T score of 32 for the sum of 11. (NC=32).

Computation of CD score:

1.5 was assigned because the applicant reference group was 10 percent or less Black. (CD=1.5).

Computation of applicant score (AS): AS = (30+32) x 1.5 = 93.

QUANTIFIED DIVERSITY ADMISSIONS MODEL

For the past ten years law school admissions has typically been a highly quantified process whereby an applicant's GPA and LSAT score were given predominant weight in the admissions decision.[29] Both before and after *Bakke*, however, some law schools determined that their institutional objectives required an approach to admissions that did not give automatic admission to candidates on the basis of the highest numerical indices.[30]

Although there always exists the fear of too much mechanization and not enough attention to individual characteristics when an admissions process is highly quantified, the typical admissions procedure during the past ten years has, in fact, been extremely mechanical. Many of the decisions could almost have been made by computer with offers of admission automatically going to the possessors of the highest GPAs and LSAT scores.[31] Some schools have tempered the admission-by-number syndrome with personal evaluations of the candidate's other attributes. But for a fair evaluation of other applicant traits deemed relevant to an institution's educational and societal goals, there must be a clear delineation of the institutional goals and they must be scrupulously followed with each candidate.

A highly quantified admissions matrix represents a fair manner of assuring that each applicant for admission to law school is evaluated on the same relevant objectives by all members of the admissions committee. Especially in the post-*Bakke* era, most law schools in California claim to prefer numerous diversity characteristics, such as those suggested by Justice Powell in his opinion in ***Bakke***. What is not clear, however, from the survey information elicited by MALDEF from the fifteen ABA-approved schools in California is how due weight is accorded to some of the varying diversity characteristics which different schools find relevant to their own institutional objectives.[32]

In a post-***Bakke*** period in which a majority of institutions appears to be placing greater weight on factors apart from purely numerical ones, fairness, consistency, and due process are potentially well served by a carefully designed quantified admissions model.[33] Needless to say, each individual law school would have to sculpt a model to satisfy its own unique institutional needs. An example, however, of a meticulously designed model is that of Temple University School of Law.

Temple University, in 1968, in the aftermath of the assassination of Dr. Martin Luther King, Jr. and the recognition that only two of the 500 students enrolled in the school were Black, began heroic and consistent efforts to rectify what was perceived by its own admission, a pernicious social ill.[34] The school's efforts at recruiting and admitting racial/ethnic groups have been honed over a decade's experience. The resulting admissions matrices currently used at Temple University reflect not only a commitment to the populist tradition of the school to offer superior educational experiences to all, but also a realistic appraisal of precisely which admissions procedures have produced positive results.[35]

Although the admissions formulae utilized by Temple University School of Law are highly quantified, they at the same time embody an individualistic, humanistic approach which few law schools with less "quantified" admissions matrices approach. As Dean Liacouras of Temple University School of Law aptly observed:

> We have nearly three times as many qualified applicants as available seats. What we should be asking and doing something about, is how and why numerical indices (GPA-LSAT) were developed, used, over-used and abused in filling those seats. What we should be stressing is the humanistic aspect of admissions; use of people-oriented, not numbers-oriented indices, assumptions, objectives, validation studies and rhetoric for all persons. Such questions are not for 1963 vintage; their answers should be agenda item number one in 1978.[36]

One might add that the questions posed by the dean continue to be relevant for 1980 vintages and beyond.

To effectuate the public policy goals of Temple University School of Law, namely those of fulfilling its populist objectives, variations of the following regular and special admissions formulae have been and are presently in use. Regular admissions candidates are evaluated pursuant to objectified criteria, with offers of admission going automatically to candidates scoring over a determined numerical score. In 1978, for example, Temple University's admission standard for nondiscretionary, regular admissions was as follows:

	Total Points Possible
1. Undergraduate grade average x 338	1352
2. Last reportable period grade point average x 112.	448
3. Highest LSAT x 1	800
4. Highest Writing Ability (WA) score x 5	400
5. Academic honors and achievements (up to 50 points)	50
6. Peace Corps, VISTA, military service, etc. (up to 50 points)	50
7. Substantial part-time work during college (up to 50 points)	50
8. Full-time employment post college (up to 50 points)	50
9. Undergraduate college grade point average adjustment (up to 50 points)	50
Maximum Combined Point Total	3250

An applicant falling below the automatic cutoff score, which varies from year to year, is then potentially eligible for consideration under Temple's Sp.A.C.E. Program (Special Admissions and Curriculum Experiments Program). For consideration under the Sp.A.C.E. admissions formula, a candidate must exhibit some exceptional characteristics or characteristic; applicants may also specifically request that they be evaluated pursuant to the Sp.A.C.E. criteria.[38] The seven categories suggested by Temple University School of Law as within the jurisdiction and purview of Sp.A.C.E. admissions are as follows:

1. Minority: Black, Hispanic, American Indian, Asian, or any other group grossly underrepresented in the legal profession and whose members predominantly score below, on the average, the median LSAT and WA of the national population;
2. Nonminority (i.e., other than category (1), *supra* with equivalent admissions criteria as in category (1);
3. College GPAS of 3.80 or above (including Phi Beta Kappa, summa cum laude honors);
4. Overcoming exceptional and continuous economic deprivation (the "Conwellian" tradition);
5. Exceptional and continuous leadership ability demonstrated in substantial college or community activities;
6. Exceptional physical disability, such as blindness, which precludes taking the (regular) LSAT;
7. There may be additional outstanding applicants who are not within the above six categories. Any applicant who believes that he or she has exceptional and unique credentials should describe them and include substantial supporting documentation with the application for review by the Committee.[39]

The variations possible under a quantified admissions system are virtually infinite. The Temple University model, as well as the quantified formula set forth *infra*, are illustrative of the flexibility that quantified admissions matrices permit schools in establishing admissions policies consistent with their institutional needs and objectives. For example, one medical school in 1978-1979 conducted its admissions by the following format which quantifies an applicant's GPA, MCAT score, minority status, and disadvantagement. See Table, following page.

Any applicant receiving 15 points or more in the initial screening is placed in Group A, which signifies that the candidate will be interviewed. Additionally, any candidate with a doctoral degree (including a Ph.D. or J.D.) is automatically interviewed. Applicants whose total points do not reach

15 are placed in Group B; Group B applicants are given individualized consideration based on specific criteria related to outstanding achievements on these enumerated criteria, 100 applicants from Group B are transferred to Group A, therefore, interviewed.

Range of Applicant Grouping for Admissions Process 1979

OGPA	Points	MCAT	Points
P/F	10	15-10	10
4.0-3.6	10	9-8	6
3.59-3.0	6	7-6	4
2.9-2.8	4	5-4	1
2.79-2.51	1	3-0	0
2.5-0	0		

If minority - 5 points
If disadvantaged - 5 points

(Source: "Admissions Procedures for 1978-1979," mimeographed for a nationally known state supported medical school.)

Again, the commendable aspect of this admission plan is the forthrightness with which the school has constructed an admission matrix which satisfies its clearly enunciated institutional goals. The school states:

> The Admissions Committee is charged with the selection of 100 individuals to begin study each year. In the selection process the Committee seeks those applicants who have demonstrated, through achievement, academic potential for a life-time of directed and self-study. It also seeks those individuals who are cognizant of the physician's role and its demands, have demonstrated ability in effective interpersonal relations, are caring of the needs of society and its individual members and who show promise of serving the needs of the individuals in our pluralistic society. Since our society is composed of a diversity of groups, the physicians who serve these groups must represent a diverse spectrum of society. The Admissions Committee is acutely aware of this fact and actively seeks individuals from a wide variety of backgrounds and interests who can share experiences and knowledge of diverse population groups and, in turn, better prepare themselves to serve individual patients who represent the widely divergent elements of our society.[40]

In summary, a quantified admissions model is capable of the virtues which were previously discussed: noncognitive traits can be systematically and fairly applied to all applicants; noncognitive traits can be explicitly incorporated into the predictive index, which is known to be an incomplete evaluator on which to predict one's potential to be a good law student or lawyer; the noncognitive factors which a school chooses to publish can truly reflect the social and institutional goals of the law school; noncognitive diversity characteristics are indisputably compatible with the *Bakke* decision; and finally, the correct use of a qualified admissions system which is highly attuned to the goals of the school can ensure a degree of fairness, consistency, and educational due process which few other methods of admission can guarantee.

Law schools can, under a quantified system, exercise their discretion in determining the kind of student body they want, including a highly diverse group with strong representation from a variety of racial/ethnic backgrounds. Weight for example, could be accorded some of the noncognitive traits isolated by Dr. Sedlacek in the Cultural Diversity Model, *supra*, or those identified in the MALDEF pilot study of three California law schools. (Ch. VI, p. 58). Furthermore, a highly quantified model need not be so rigid as to preclude the exceptional individual who does not fall neatly into any of the categories. The quantified model could contain a category allotting specific points for the truly exceptional applicant, or a solution similar to that provided by Temple University's Sp.A.C.E. formula could be fashioned.

In short, our advocacy of a quantified model is totally antithetical to the sort of quantified formula typified by the numerical prediction indices based solely on GPAs and LSAT scores. A quantified model need not connote narrow or mechanical decision making. Rather, it is an opportunity for schools to assign numerical weights to any set of student characteristics that are consonant with their changing institutional missions. Thus, law schools may develop comprehensive, well thought-out admissions procedures responsive not only to their educational goals, but also to the moral and social responsibilities incumbent on institutions in a pluralistic society.

PROTOTYPE BASED ON THE URBAN LEGAL STUDIES PROGRAM

Program Description

The Urban Legal Studies (ULS) Program was begun in 1975 at City College of New York in conjunction with New York Law School, a recognized ABA-approved law school. The ULS Program, in keeping with the high academic, yet urban, tradition of City College seeks to select and enroll fifty well-qualified high school graduates for a combined six-year B.A.-J.D. degree.[41] Applicants to the Program must have, among other requisites, an eighty or better average on graduation from high school, and must demonstrate commitment to the goals of the Program. The ULS Program is principally dedicated to the goal of training excellent lawyers who will serve the needs of those who comprise the majority of any large urban setting: the nonaffluent, minorities, the non-English speaking, and the elderly.[42]

The ULS Program is innovative not only in its goals as they differ from traditional legal educational goals, but also in the structure of the Program. Students, though entering the six-year program with a personal commitment to obtain a J.D. degree, must complete all the Bachelor's degree prerequisites.[43] However, while satisfying the Bachelor's requirements, students must also complete the following legal courses, all taught and graded by law professors from New York Law School:

First Year:
    Introduction to Law and Legal Process I;
    Introduction to Law and Legal Process II.
Second Year:
    Constitutional Law I;
    Constitutional Law II;
    Legal Research and Writing.
Third Year:
    Criminal Law;
    Criminal Procedure;
    A Mandatory Internship.[44]

After completion of the undergraduate requirements of the three-year program, which include satisfying the prevailing minimum honors requirements at City College, ULS students may apply for admission to New York Law School. For automatic admission to the law school, ULS students must have maintained an overall GPA of 3.00 or better, an overall 2.00 or better average in the required law courses, and have completed ninety-six undergraduate credits from the ULS undergraduate curriculum. Satisfactory performance on the LSAT, meaning a median score around 500, is also a prerequisite for automatic admission.[45] Applicants not admitted automatically are judged on a case-by-case basis as to their eligibility.

The innovation of the Program, apart from its thrust toward serving groups who have traditionally been ignored or at least have been objects of benign neglect by the legal system, lies in its ability to evaluate potential law students on the basis of actual law school work they have completed. It should be emphasized that the legal courses required for ULS participants are taught by regular faculty members at New York Law School and that the ULS students are evaluated by using the same standards as are used for regular first-year law students studying the same courses. Since the ULS students at the time of completion of the undergraduate program have had ample opportunity to demonstrate either their ability, or inability, to be able to complete law school studies successfully, evaluation of a candidate for acceptance to New York Law School should be made principally on each student's demonstrated record.

Although the LSAT is still a requirement, it may not be particularly relevant in evaluating urban legal studies participants. By admission of the test manufacturers, the utility of the LSAT is clearly limited to its ability to predict first-year success in law school.[46] By contrast, the ULS Program offers the law schools an opportunity to evaluate a candidate on actual completed performance in specific first-year law courses.

In an approaching epoch characterized by a declining pool of undergraduate and graduate applicants, the ULS concept is attractive in several ways.[47] First, it allows undergraduate schools with affiliated law schools to take an active part in preparing a pool of qualified candidates for their law schools. Second, it fulfills a compelling obligation of providing legal education and services to groups and communities who historically have been excluded from the benefits which our legal system was designed to provide and protect. Third, the Program goes far toward obviating the need to place undue, if any, reliance on the LSAT, which currently serves as the chief impediment to the entrance of minority and disadvantaged students into law school.[48] Finally, students who are not admitted to New York Law School or who choose to apply elsewhere may complete their fourth year at City College and attend other law schools.

It is important that the ULS Program not be construed as one which is exclusively reserved for minority students. In fact, in the 1978-1979 third-year ULS undergraduate program, class composition was 50 percent minority and 50 percent white; the majority of the students from other groups, however, were from lower socioeconomic backgrounds.[49]

By contractual arrangement, New York Law School reserves fifty places in each entering class for ULS students who have completed the necessary requirements within their three-year undergraduate study program at City College.[50] However, as mentioned previously, admission is not automatic, but rather contingent on satisfaction of the criteria set forth, *supra*. Although most ULS students who pursue legal studies do so at New York Law School, there are some exceptions.[51]

Any institution interested in replicating the ULS concept of a combined B.A.-J.D. degree could, of course, tailor the program to its own institutional and geographically dictated goals. The program could be of six or seven years in duration; its goals could be directed more to rural than urban legal needs; monetary sanctions or incentives could be provided to assure that the majority of the students trained at the undergraduate level by a particular institution would indeed complete their legal training at the affiliated law school; and finally, the undergraduate degree could be awarded prior to entry to law school or on completion of the first year of legal studies as is done in the ULS model. In sum, the variations are infinite and would depend on the goals and needs of a particular institution. The important point to recognize is the vast possibilities presented by a program of this kind.

Program Data

Current data on the ULS Program for the first class which entered in 1975 and sought admission to law school in 1978 are as shown in Table I.

Twenty-four ULS students sought admission to New York Law School after three years in the Program. As of December 1979, all 24 of the students admitted to law school were pursuing studies, with the exception of number 23 who was dismissed from New York Law School for academic reasons: a GPA of less than 2.00. The dismissed student, however, did complete his B.A. degree.[52] Of the other fourteen ULS students admitted and attending New York Law School, all maintained a 2.00 or better cumulative average during their first year, with most maintaining a 3.00 or better. Illustrious examples are: two ULS students with respective LSAT scores of 521 and 517 became law review members; one student with an LSAT of 639 received a four-year Urban Legal Fellowship; one student whose LSAT was 511 was appointed to the Jessup International Law Moot Court Team; and finally, one student with a 561 LSAT won the Court Best Brief award.[53]

With respect to ULS applicants to law school in 1979, the data are as shown in Table II.

Program Analysis

The advantages of an innovative program such as the ULS model are numerous. First, although it is not a minority program, it assists both minority and white students in gaining access to law school on the basis of their actual performance in selected first-year classes rather than predicted performance based on the LSAT. It is indisputable that this is a benefit to minority group and disadvantaged white applicants, as is evident by the classes admitted in 1978 and 1979 to New York Law School. A second, and great,

TABLE I

1978 Law School Applicants

Number	Student	Overall GPA	Highest LSAT Score	Admissions Status
1	W.M.	3.72	622	A/O
2	W.F.	3.48	596	A/E
3	W.F.	3.67	521	A/E
4	C.F.	3.82	611	A/O
5	W.M.	3.46	517	A/E
6	W.M.	3.40	550	A/E
7	W.F.	3.58	594	A/O
8	W.M.	3.55	563	A/E
9	W.M.	3.58	549	A/O
10	W.M.	3.60	511	A/E
11	B.F.	3.33	505	A/E
12	B.M.	3.01	639	A/E
13	W.F.	3.00	561	A/E
14	W.M.	3.26	558	A/E
15	W.M.	3.12	563	A/E
16	W.F.	3.36	494	A/E
17	L.M.	3.00	426	A/O
18	W.M.	2.42	488	R/O

19	W.F.	2.68	583	A/E
20	L.F.	3.00	429	R/O
21	B.F.	2.67	556	R/O
22	W.M.	3.57	706	A/E
23	W.M.	2.97	455	A/E
24	L.F.	2.81	335	A/O

(Legend): F = Female
M = Male
B = Black
W = White
L = Latino
C = Chinese

A = Accepted at New York Law School
E = Enrolled in New York Law School
R = Rejected by New York Law School
O = Attending other law schools

(Source: Leora Mosston to Mexican American Legal Defense and Educational Fund, 6 December 1979, p. 2; see footnote 49.)

TABLE II
1979 Law School Applicants

Number	Student	Overall GPA	Highest LSAT Score	Admissions Status
1	W.M.	3.56	680	A/E
2	L.M.	3.29	549	A/O
3	W.M.	3.25	627	A/E
4	W.M.	3.73	606	A/O
5	W.F.	3.43	487	A/E
6	W.M.	3.16	627	A/E
7	W.M.	3.00	653	A/E
8	B.M.	3.00	474	A/E
9	B.M.	3.12	430	A/O
10	W.F.	3.33	474	R*
11	W.M.	3.00	680	A/E
12	W.M.	3.00	680	A/E
13	L.F.	3.00	506	A/E
14	B.F.	3.00	477	R/O
15	W.M.	3.00	499	R/O

* (Completing fourth year at City College)

(Source: Leora Mosston to Mexican American Legal Defense and Educational Fund, 6 December 1979, p. 2; see footnote 49.)

advantage of the Program is that students who do enter law school are well prepared for the study of law by virtue of the regular law courses they have already completed. Therefore, the tutorial and supportive programs which are advisable, if not indispensable, at most law schools with special admissions programs are unnecessary with ULS students who have already completed extensive legal writing, reading, and analysis prior to entry to law school.

Furthermore, Professor Haywood Burns, Esq., Program Director of ULS, has noted that ULS first-year law students are particularly well prepared for the study of law since they are already familiar with methods of legal study and legal principles.[54] Such familiarity would be a boon to all culture-shocked first-year law students, but is especially so to minority students for whom the legal profession is an even more alien environment.

Another obvious benefit of the ULS program is that it prepares a pool of attorneys for potential service in underserved communities. Although graduates of the ULS Program and New York Law School are under no contractual obligation to practice in underrepresented areas, certainly most enter the Program with that objective since commitment to the goals of the Program is one of the characteristics evaluated for each applicant. Careful admissions decisions based on student and faculty assessments assist in fulfilling these goals.

Finally, a program such as ULS lends itself to many variations; it could be used as a prototype to be adjusted according to the institutional objectives of individual law and undergraduate schools. Such a program could address some of the following needs: creation of a qualified and diverse student applicant pool for law school; preparation of a qualified and diverse entering law school class willing to meet the needs of the poor and minorities; and cultivation of a law school body approaching racial/ethnic parity with the particular geographical region in which the school is located.

V. CONCLUSION

The models which MALDEF has developed present opportunities for the law school community to test-pilot and selectively adopt alternative admissions criteria which will assist minority students to approach parity in the legal profession. Admissions criteria are not sufficient *per se* however, to address the dismal reality of current minority participation in the law.

Indeed, if significant progress is to be made in the near future, a serious commitment will be necessary from all sectors of the legal profession. This commitment must be made manifest by a comprehensive approach to law school access for racial/ethnic minorities. To this end, a national program has been started by MALDEF to refine our admissions models and to develop new models in the areas of early identification and recruitment of talented minorities, law school retention programs and special minority bar passage efforts. Such a national strategy, aimed at substantially increasing minority access to the legal profession, will be directed by a panel of outstanding legal notables and, of course, will take advantage of the latest results of research and existing practices in the field.

As the final two chapters of the MALDEF study demonstrate, successful retentive and bar passage programs have been undertaken by certain law schools and legal organizations. The results of these exemplary programs have been dramatic; in Illinois, for example, the Minority Legal Resources Summer Bar Program has raised the passage rate for minority bar candidates from twenty-four percent before 1975 to seventy-nine percent in 1977, to a current rate of sixty percent for first-time takers.

Likewise, the tutorial program at the University of San Francisco School of Law has reduced attrition among its special admittees since the inception of a comprehensive, meticulously administered retentive program. More significantly, minority students who participated in the program tended to distribute themselves among the quartiles of academic performance rather than clustering at the bottom, as had been customary in the past.

Real commitment to minority access to law, then, must include a comprehensive approach which will deal with all four issues related to the dearth of minority practitioners: recruitment, admissions, retention, and bar passage. Only through cooperative efforts between the law schools, law professors and deans, national legal organizations, national advocacy organizations, policy makers, and student groups can these issues be resolved. If the next decade is to have any significance apart from solidifying the virtual caste system which currently exists in the legal profession, it is imperative that a commitment be made to including minority persons in our system of law and justice.

NOTES

1. James P. White, "Minority Group J.D. and LL.B., Candidates Enrolled in Approved Law Schools—1971 Through 1978—Minority Group J.D. and LL.B. Degrees Awarded 1977-78," American Bar Association Memo QS 7879-15 (Memorandum to Deans of ABA-Approved Law Schools, Chicago, 30 April 1979).

2. U.S. Department of Commerce, Bureau of Census, *Statistical Abstract of the United States* (Washington, D.C.: Government Printing Office, 1978), p. 419.

3. Felicenne H. Ramey, "Minority Lawyers in California: A Survey, "*Los Angeles, Daily Journal Report* 78-22 (17 November 1978): 10, 14.

4. Jonathan Kirsch, "Chicano Power," *New West* (11 September 1978): 35-40.

5. Mexican American Legal Defense and Educational Fund, Law School Admissions Study Questionnare, 1979.

6. E.S. Quade, "Analysis and Public Decision," *Analysis for Public Decisions* (New York: Elsevier Press, 1975), pp. 1-11.

7. The Regents of the University of California v. Bakke, 438 U.S. 265 (1978).

8. Linn, "Test Bias and the Prediction of Grades in Law School," in 3 (LSAC-75-1) at 1, 3 (1977).

9. Brief Amicus Curiae for the Association of American Law Schools in Support of Petitioner (No. 76-811) in the Regents of the University of California v. Bakke, 438 U.S. 265 (1978) at p. 11.

10. Joel Dreyfuss and Charles Lawrence III, *The Bakke Case: The Politics of Inequality* (New York: Harcourt Brace Jovanovich, 1979), p. 138.

11. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of Data for the Class Entering in the Fall of 1976," in 3 (LSAC-77-1) at 551, 566-67 (1977).

12. Mexican American Legal Defense and Educational Fund, Law School Admissions Study Questionnaire, 1979.

13. Brief Amicus Curiae for AALS in *Bakke* at p. 10.

14. "Public Policy and Academic Policy," *Selective Admissions in Higher Education*: The Carnegie Council on Policy Studies in Higher Education (San Francisco: Jossey-Bass, Inc., 1977), p. 10.

15. Michael Wallach, "Tests Tell Us Little About Talent," *American Scientist* 64, no. 1 (January-February 1976): 57.

16. "Cautionary Policies Concerning Use of the Law School Admission Test, the Law School Data Assembly Service, and the Law School Candidate Referral Service," memorandum (Princeton, N.J.: Law School Admission Council, 1978) to Law School Deans, LSAC Council Representatives, Admissions Committees, and LSAC Board and Committee Members.

17. Mexican American Legal Defense and Educational Fund, Law School Admissions Study Questionnaire.1979.

18. The Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265.

19. Ibid., 265, 313.

20. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of Data for the Class Entering in the Fall of 1976," in 3(LSAC-77-1) at 551, 566-67 (1977).

21. The above model was developed by Dr. William E. Sedlacek. Dr. Sedlacek is one of the leading researchers in the formulation of noncognitive variables which have been shown to be indicative of minority success in higher education. His work includes: C.M. Pfeifer, Jr. and W.E. Sedlacek, "Nonintellectual Correlates of Black and White Students' Grades at the University of Maryland," *Cultural Study Center Research Report No. 3-70* (College Park, Maryland: University of Maryland, 1970); C.M. Pfeifer, Jr. and W.E. Sedlacek, "Predicting Black Student Grades With Nonintellectual Measures," 43 J. Negro Educ. 67-76 (1974); C.M. Pfeifer, Jr., and W.E. Sedlacek, "The Validity of Academic Predictors for Black and White Students at a Predominantly White University," 8 J. Educ. Measurement 253-261 (1971) and D.O. Prieto, P.G. Bashook, A.G. D'Costa, P.R. Elliott, R.K. Jarecky, B. Kahrahrah, W.F. Leavell, and W.E. Sedlacek, *Simulated Minority Admissions Exercise Workbook* (Washington D.C.: Association of American Medical Colleges, 1978), pp. 1-33.

    Other researchers whose work supports that of Dr. Sedlacek are: A.R. Baggaley, "Academic Prediction at an Ivy League College, Moderated by Demographic Variables," *Measurement and Evaluation in Guidance*, 6 (1975): 232-235; F.J. Borgen, "Able Black Americans in College: Entry and Freshman Experiences," *Merit Scholarship Corporation Research Reports*, 6, no. 2 (1970); R.D. Goldman, "Hidden Opportunities in the Prediction of College Grades for Different Subgroups," 10 J. Educ. Measurement 204-210 (1973); F. Perry, Jr., "Selected Variables Related to Academic Success of Black Freshman Students at the University of Missouri—Columbia," (Ph.D. diss., University of Missouri, Columbia, Missouri, 1972); and G. Temp, "Validity of the SAT for Blacks and Whites in Thirteen Integrated Institutions," 8 J. Educ. Measurement 245-251 (1971).

22. The theoretical framework underlying the use of noncognitive variables in admissions decisions is based on research which indicates that the GPA and LSAT are incomplete instruments on which to make a full evaluation of a candidate, especially a nontraditional applicant. See Chapter III of the Law School Admissions Study.

    Moreover, studies support the proposition that if traditional predictors are used, there must be separate equations or cutoffs for each subgroup to achieve optimum validity. Other studies supporting the differential regression equations for race/sex subgroups include: A.S. Farver, W.E. Sedlacek, and G.C. Brooks, Jr., "Longitudinal Predictions of University Grades for Blacks and Whites," *Measurement and Evaluation in Guidance*, 7 (1974): 243-250.

23. As used in this formula, the symbols connote the following: NC represents the noncognitive score, C represents the cognitive score (GPA and LSAT) with CD representing the cultural diversity score. AS denotes the total applicant score on the basis of which offers are made.

24. "As noted in Justice Powell's opinion in *Bakke vs. University of California* (sic), '. . .we do not compel the University to utilize only "the highest objective academic credentials" as the criterion for admission.' Institutions do in fact select students at least in part on a variety of other grounds. For example, institutions routinely consider nonacademic characteristics in order to:
    - select students likely to exhibit outstanding performance on criteria other traditional grades (e.g., leadership, scientific creativity, artistic achievement)
    - select students who are more likely to persist to a degree
    - achieve reasonable representation of important demographic groups (e.g., sex, race). . .
    - select students who are related to important sources of support to the institution (e.g., relatives of alumni, faculty, or benefactors)"

    Hunter M. Breland and Warren W. Willingham, "Personal Qualities in Admissions," mimeographed, a cooperative research and development project between the College Board and the Educational Testing Service (Princeton, N.J., December 1978), pp. 5-6.

25. See Chapter V, of the Law School Admissions Study for a discussion of U.S. Department of Health, Education, and Welfare, Office for Civil Rights, Office of the Secretary, "Nondiscrimination in Federally Assisted Programs, Title VI of the Civil Rights Act of 1964—Policy Interpretation," *Federal Register* 55, no. 197, (10 October 1979) pp. 58509-58511. Also available through the Office for Civil Rights, mimeograph, pp. 1-11.

26. William E. Sedlacek, "A Cultural Diversity Selection Model for Law School Admissions," prepared for the Mexican American Legal Defense and Educational Fund, mimeographed (College Park, Maryland: University of Maryland, 1 October 1979).

27. Studies corroborate the utility of these factors for student assessment. Please refer to Addendum A which immediately follows this model for a description of the weighting of the scale values for each of the components making up the noncognitive score.

28. T score is a standardized score where the mean is set at 50 and the standard deviation is 10. For instance, applicant A had a GPA of 3.6. If the pool of applicants to a particular school had a mean GPA of 3.3 with a standard deviation of 0.2, we would set 3.3 equal to 50 and each unit of 0.2 above or below the mean equal to 10. Thus a GPA of 3.5 would equal a T of 60, a GPA of 3.1 would equal a T of 40, and a GPA of 3.6 would equal a T of 65, a GPA of 3.6 would be 1.5 standard deviations, or 0.3 above the mean, so 3.3+0.3=3.6. T scores allow for scores based on different scales to be compared, added, subtracted, etc. The scoring system employed by many standardized tests such as the SAT and the LSAT is similar to the T score in that the mean is set at 500 and the standard deviation at 100. A more complete discussion of T scores can be found in F.G. Brown, *Principles of Educational and Psychological Testing*, 2nd ed. (New York: Holt, Rinehart and Winston, 1976).

29. Please refer to Chapter IV of the Law School Admissions Study for an analysis of the weights assigned to the GPA and LSAT in ABA-approved California law schools.

30. Among the innovators have been Temple University and Rutgers University Schools of Law.

31. See Chapter IV of the Law School Admissions Study for an analysis of MALDEF's survey instrument distributed to all ABA-approved California law schools.

32. Ibid.

33. Ernest Gellhorn and D. Brock Hornby, "Constitutional Limitations on Admissions Procedures and Standards—Beyond Affirmative Action," 60 U. Virginia L. Rev. 975-1011 (1974).

34. Peter J. Liacouras, "Toward a Fair and Sensible Policy for Professional School Admission," Cross Reference, vol. 1, no. 5 (Philadelphia, March-April 1978; reprint ed.), p. 158.

35. Ibid., pp. 156-180.

36. Ibid., p. 161.

37. Ibid., p. 179. It should be noted that Temple University adjusts an applicant's grade point average on the basis of actual grade inflation at the particular undergraduate institution of the applicant rather than assuming that candidates from prestigious undergraduate schools should automatically receive bonus points. In fact, Temple University School of Law has documented that grade inflation is often most prevalent at Ivy League-type universities.

38. Ibid.

39. Ibid., pp. 180-181.

40. "Admissions Procedures for 1978-79," mimeographed for a nationally known state supported medical school.

41. "The Urban Lawyer: A New Professional," The Max E. and Filomen M. Greenberg Center for Legal Education and Urban Policy brochure, Urban Legal Studies Program, City College of New York, N.Y., Haywood Burns, Director.

42. Ibid.

43. Although the ULS Program is a combined six-year B.A.-J.D. degree, a prototype program could also be structured on a typical seven-year basis.

44. "Urban Legal Studies Curriculum" The Max E. and Filomen M. Greenberg Center for Legal Education and Urban Policy, Urban Legal Studies Program, City College of New York, N.Y. (31 August 1979), Haywood Burns, Director and Leora Mosston, Associate Director.

45. Ibid.

46. See Chapter III of the Law School Admissions Study.

47. "A Multi-Campus System in the 1980s," Report of the Joint Planning Commission, University of California (September 1979).

48. Evans, "Applications and Admissions to ABA Accredited Law Schools: An Analysis of Data for the Class Entering in the Fall of 1976," in 3 (LSAC-77-1) at 551, 556-67 (1977).

49. Leora Mosston, Associate Director of the Urban Legal Studies Program to Mexican American Legal Defense and Educational Fund, 6 December 1979, City College of New York, N.Y., p. 3.

50. "The Urban Lawyer: A New Professional."

51. Professor Haywood Burns, Program Director, stated on 7 December 1979 at the Advisory Committee meeting to MALDEF's Law School Admissions Study that there are former ULS students currently studying law in diverse institutions such as the University of Southern California, Hastings School of Law, and Rutgers University. The majority of the ULS students, however, do not have the option of applying for admission at law schools other than New York Law School since they are not awarded their B.A. degree until after completion of the first year of law school at New York Law School. Some students, however, have accelerated their undergraduate studies or have chosen to spend additional time at City College to satisfy all undergraduate requirements prior to applying to law school.

52. Mosston to MALDEF, 6 December 1979, p. 3.

53. Ibid.

54. Professor Haywood Burns speaking at the Advisory Committee meeting to MALDEF's Law School Admissions Study on 7 December 1979.

Standardized Selection Criteria and a Diverse Legal Profession

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ETS and the Law School Admission Council claim that the LSAT is a tool of educational selection which significantly improves the prediction of first year law school graduates. While these claims should be analyzed, evaluation of the test should not be confined by the terms of debate which its makers have chosen to justify its existence. The test should be evaluated in terms of what is actually affects. The rationality and equity of the full range of its impact should be carefully considered.

What the LSAT actually affects is access to the nation's most powerful profession. By determining in significant measure who may become a lawyer in the United States the LSAT is directly involved in the distribution of power, in deciding who will run this country and who will be permitted to argue for justice on behalf of their people.

The social process of sorting out those who will wield power from those who will submit to it is typically slow and complex, extending throughout a person's childhood, adolescence and early adulthood and involving a host of economic, cultural, educational and political institutions. Among these institutions, the LSAT is distinguished by the quickness and decisiveness with which it does its work. Through the administration of 190 multiple-choice questions in 210 minutes, the LSAT can take students whose more than 20 years of previous academic and occupational peformance have thus far placed them on an equal competitive footing and instantly sort them into those who will have the opportunity to become lawyers and those who will not. It does so with a pretense of impartiality, with the widely accepted and internalized image of being the objective national measure of potential for legal study, which makes its verdicts doubly potent.

This paper will attempt to briefly consider the rational social function of this powerful institution.

Barrier to the Bar

Lawyers occupy two out of three U.S. Senate seats and half of the nation's highest governor's mansions. They constitute one of the highest paid professions in the country, with an average income greater than that of ninety-three percent of American earners.

ETS publications for prospective law students emphasize the profession's strategic position. In the words of the *Prelaw Handbook*, "the lawyer can function. . .as social planner. In business, labor, personal, family and governmental affairs, the lawyer will usually be the one who builds the institutional framework." The *Handbook* explains that the profession is looking for youth who "have drunk rather freely of the best our culture can provide" and who have a grasp of "the democratic process in western societies (and) awareness of the moral values inherent in these processes." It finds them by means of the LSAT.

By the early 1970s, shrewd corporate strategy had combined with demographic trends and bar association policies to place ETS in a position of power with little precedent in U.S. educational history: a single corporation, ETS, had become the primary arbiter of who would be permitted to enter the American legal profession. As any aspiring lawyer would soon discover, the facts were inescapable:

- Through the mid and late 1970s the number of applicants to U.S. law schools regularly exceeded the number of available places by a ratio of two to one. By 1973 the Association of American Law Schools noted, "for the first time in the history of the United States legal education at every accredited law school denied admission to applicants whom it considered quaified for the study of law."

- Rejection from law school could therefore mean not just exclusion from a particular institution, but from the legal profession itself. "Law school admission officers, rather than bar examiners," ABA President-Elect Chesterfield Smith observed in 1973, "are in large measure picking out future lawyers."
- ABA accreditation rules required law schools to screen their applicants with "an acceptable test."
- The only national law school test available was the one that was recommended by name in the ABA accreditation rules: the ETS Law School Admission Test (LSAT).
- Thus, by 1979, each of the 168 ABA accredited law schools used the LSAT to screen their applicants.
- In addition, most of these law schools used the Law School Admission Council's validity study service to compute relative weights for LSAT scores and previous grades in their admission index formulas. Individual law school validity studies reviewed by David White suggest that most schools may be receiving formulas which weight the LSAT more heavily than previous grades. These admission indices play crucial roles in admission decisions. Indeed, an LSAC study cited by White found that the correlation between an applicant's admission index and their chances of being admitted was substantially stronger than the correlation between the admission index and first year grades, the criterion which the index was designed to predict. In other words, the index said more about the applicant's chances of getting in than it did about their ability to perform once admitted.

  "Admission to law school is the primary gateway to membership in the profession," Professor Millard Ruud of the LSAC has noted, "and a satisfactory LSAT score is essential to admission to law school."

For many applicants, the LSAT has served not just as an important factor in the admission decision but as an absolute prerequisite capable of negating a distinguished record of prior academic performance. In 1976, the most recent year for which complete figures are available, of the 1,728 applicants who had earned "A" averages in college but scored below 500 on the LSAT, 872 of them, or slightly more than half, were rejected by every accredited law school to which they applied.

The Goal: Quality Representation for All

Since the LSAT helps determine who will become a lawyer its function must be justified in terms of the ultimate professed goal of the legal profession: providing justice. The United States legal system is premised on the assumption that justice emerges through adversary proceedings, through the clash of competing interests represented by certified advocates. Such a system requires that quality representation be available for all parties. This concern is reflected in the profession's canons of ethics. It grows directly out of the traditional ideology of freedom and competition. Americans are taught from their earliest days that you do not sit around and wait for economic reward or political justice to be handed down to you from some central authority above; instead; you stand on your own two feet and go out and fight for it. In the economic arena this means the right to sell your services where you choose. In the legal arena, it means the right to have a lawyer.

In recent years, there has been increasing recognition that in a society of people with diverse backgrounds and interests, quality representation for all requires a diverse corps of advocates. Justice Powell has offered a cautious recognition of this principle with his affirmation in *Bakke* that diversty in the student body is a legitimate and important goal for law school admissions policy. The American Bar Association and the Law School Admission Council went one step further in their brief in the *Defunis* case when they argued that the profession should have more lawyers from minority and low-income backgrounds because "clearly an unmet need for legal services exists in the poor and disadvantaged community." But the real case for diversity in the profession is far more compelling than either of these arguments. It is not a matter of what the law schools want to achieve, or how the ABA feels about the current distribution of services; it is a matter of defending and advancing the interests of the working people of this country, of the minority, low-income and working-class families who collectively make up the bulk of the work force and the population but who hold a disproportionately small sliver of the economic wealth and political and legal power. Working-class, black, Latino, Asian and Native American people must be permitted to represent their own interests in the competition with the economic and social elite for control of the nation's resources and political priorities. This is fundamental to our concept of democracy, competition and legal contest.

Theoretically, in order to simply *maintain* the current distribution of power, working-class and minority people would have to be represented proportionally in the legal profession. In order to *redress* the inequities of that distribution, in order to alter the status quo and compensate for their lack of resources, working-class and minority people would have to be *over*-represented. In fact, however, the situation is the opposite, a state of affairs which can only serve to preserve and exacerbate the unequal distribution of power which now prevails.

The LSAT and the Social Profile of the Legal Profession

The years prior to law school present a long gamut of obstacles which winnows out the children of less-than-privileged families. Many never make it through high school, let alone college or the financial demands of post-college education. But when applicants appear at the door of the law school, the process of winnowing is not yet complete. In its applicant pool, a law school is presented wth a certain profile. A certain percentage of its applicants will be from working class and minority backgrounds and a certain percentage from elite white backgrounds. The question on which the law schools must be evaluated is: how will that social profile look after their admissions process is finished with it? What percentage of non-elite students will be left? Will the law school have helped or hurt the goal of quality representation for all through diversity in the legal profession?

The available evidence shows clearly that the answers to these questions will in large part turn on whether the law school factors the LSAT into their admission process. Entering the LSAT into the admission index skews the social profile of the admitted class away from already underrepresented minorities and, apparently, working-class students. The more the school relies upon the LSAT the more minority and working class students they will cut out, the more elite white students they will let in, and the more they will harm the goal of quality representation for all.

The 1976 admission figures compiled by ETS illustrate this dramatically. If applicants had been selected without regard to race strictly on the basis of their college grades, 1,842 black students would have been admitted to at least one accredited law school. If selection had been done on the basis of LSAT scores, however, the number of blacks accepted would have been slashed by more than half to 823. In other words, more than 1000 prospective black lawyers who had defeated their white counterparts in competition based on four years of academic performance would have barred from the law on the basis of their LSAT scores. As it happened, the LSAT was not the only factor used in admission decisions, and many schools presumably took race into account. Yet despite these considerations, incorporation of the LSAT into the admissions process *still* resulted in the eliminaion of 8.5 percent of the black applicant pool who had qualified for admission on the basis of their college grades. Use of the LSAT resulted in an actual loss of 145 prospective black lawyers who, though victorious in the competition for grades, were disqualified by 190 multiple-choice questions. The figures indicate an identical pattern for Chicano applicants. They show that even with the existence of special admissions programs, the discriminatory impact of the LSAT is so severe that in order to have chances of admission merely *equal* to those of white students, minority applicants must earn *higher* college grades. Among applicants with GPAs of 3.25 or above 80 percent of the whites, but only 77 percent of the Chicanos and 74 percent of the blacks were admitted to an accredited law school. With a GPA of 2.75 or above 68 percent of the whites, 64 percent of the Chicanos, and 58 percent of the blacks were admitted. At each descending level of grades, smaller percentages of blacks and Chicanos than of whites were admitted. Among students with GPAs of 2.50 or above, the percentage of admitted whites outstripped the percentage of admitted Chicanos 64 percent to 56 percent; only 51 percent of blacks with equivalent grades gained admission.

These figures not only rebut the prevailing myth that minority applicants must meet lower standards of achievement to gain admission, but also illustrate the power of the LSAT to in significant part negate the gains won by minority students individually in achieving high grades, and collectively in compelling the adoption of race-conscious admissions policies which still fail to adequately redress the inequitable odds created for minorities by the LSAT.

Although there is less information available on the impact of the LSAT on white working-class applicants, there is reason to suspect a similar pattern. A 1973 LSAC study found that students of "high" socioeconomic status had a mean LSAT score about forty points higher than those of "average" background who in turn ranked higher than the "low" status students by about thirty points. A number of studies have found that law school classes are significantly skewed toward overrepresentation of wealthy families and underrepresentation of working-class and low-income families. Use of the LSAT in admission formulas can be expected to keep this pattern intact.

In sum, the LSAT serves to skew the social profile of each year's entering law school class, and thereby, ultimately, the legal profession, away from diversity and toward an unequal and disproportionate distribution of legal representation.

Confronting the Criterion

Since diversity—i.e., giving people from all classes and ethnic groups the opportunity to represent themselves—is a requisite element of the ultimate professional goal of quality representation for all, how can the use of a test which systematically undercuts diversity be justified? The only conceivable defense must rest on the second element of the ultimate goal: the *quality* of the representation provided.

If the goal has two elements, diversity and quality, and one of them is being harmed by use of the LSAT, this practice can only be defended by arguing that it provides a compensating gain on the other element—it must be argued that the LSAT offers a compensating gain in the quality of lawyers.

Here we must confront an issue which ETS, the LSAC and the legal community have been sidestepping for years. Like it or not, the fact of the matter is that the LSAT helps determine access to the legal profession. The test is only validated against the standard of first year law school grades (even here its utility has been questioned). Yet it is used to make decisions with ramifications far beyond the first year. Unless one argues that performance in the first year of law school is a close proxy for performance throughout a legal career—which many would be reluctant to do—decisions to deny access to a legal career absent information with bearing on career performance cannot be defended as rational.

Defenders of the LSAT must decide what their criterion is and what law school admission policy is purporting to accomplish. The LSAT either is or is not related to legal performance. And the goal of the law schools either is or is not to maximize performance on the criterion of career legal success.

In order to defend the current system of using the LSAT to eliminate career opportunities one must choose the affirmative in both cases, and say yes, the LSAT predicts career performance, and, yes, the goal is to maximize career performance. Both of these claims, however, lead to immediate empirical and logical difficulties.

In order to say that the LSAT predicts career performance one must first overlook the fact that there is no reliable evidence to indicate that this is so. "There is no empirical evidence," noted a study in the legal journal *Law and the Social Order* of a significant correlation between LSAT scores and probable success in the practice of law; indeed such evidence would be difficult to come by in light of the inherent difficulty of empirically measuring success as a practitioner." Barbara Lerner of ETS has even suggested that certain personal factors desirable in a legal practitioner may be negatively correlated with LSAT scores. One ETS study found such a negative correlation between LSAT scores and the desire to make a contribution to knowledge or work with people in one's job. A 1977 survey by the legal periodical *Juris Doctor* found that "One thing most of the respondents agree on is that the Law School Admission Test. . .is not a valid predictor of who will be a good lawyer and who won't. Only 16 percent say that it is (62 percent say it isn't); and 22 percent don't know."

To assert that the LSAT predicts career performance one must secondly argue that *this* academic aptitude test is capable of doing what none of its counterparts have ever been advertised or found to be capable of doing. David McClelland and others have long criticized the lack or relationship between college and graduate school aptitude test scores and long term career accomplishment. Even ETS states directly that its tests make no such claim; as the SAT booklet puts it "no test predicts with any certainty 'success in life'."

And finally, the proponent of the LSAT as a predictor of legal performance must *also* argue—as ETS does in relation to the criterion of first year grades—that working-class, black and Chicano people will, on the whole, in fact be inferior lawyers. Just as ETS contends that group differences in test scores will later replicate themselves as group differences in first year grade performance, so must the defender of the long range predictive power of the LSAT posit a similar relationship between group membership and legal performance. In addition to being openly racist, such an argument would also be complicated by several facts. First, since the ABA and LSAC have already conceded membership in an ethnic minority or economically disadvantaged group as an *advantage* in seeking to meet the legal needs of clients from such underrepresented groups, this advantage would have to be *outweighed* by some severe kind of incompetence which somehow made the client worse off for having received the lawyer's counsel at all. Second, this overriding incompetence would somehow have to have been able to pass *undetected* through four years of college, three years of law school and the rigors of the bar exam, since no lawyer would be admitted to practice without first being certified by each of these institutions. And finally, this overriding, submerged incompetence would have to be seen as detectable by the LSAT and only the LSAT (since it would have missed the notice of schools and bar examiners). These arguments are clearly untenable. Yet they are necessarily required to sustain the proposition that the LSAT predicts career performance, a proposition which itself is necessarily required to sustain the current law school admission system.

But this is not all. If one says that the LSAT predicts career performance, and also wishes to defend the use of the LSAT, one must naturally say that the goal of the law school admission process is to *maximize standing on the criterion of career performance*. (Otherwise, using a test which predicts performance would have little utility.)

But if one is prepared to make this statement about maximizing performance on the criterion, they can *not* at the same time justify the current law school admission system. For although the current system does consistently and systematically screen out minority and working class people from the legal profession, it does *not* consistently and systematically maximize standing on the criterion of predicted performance as measured by LSAT scores. This may seem paradoxical at first. But consider the following. According to Barbara Lerner:

> In 1961 the median LSAT score of students at 81 percent of the nation's law schools was below 485. In 1975, not one of the 128 ABA-approved law schools had an entering class with a mean below 510. Seventy percent of them had means between 572 and 693. *What this means in comparative terms is that most American lawyers and judges practicing today would never have gotten into law school at all if they had had to compete against the inflated standards which now govern admission.* (Emphasis added.)

The converse of Lerner's observation is, of course, that many of the applicants now *excluded* from the law on the grounds that their LSAT scores do not show them to have sufficient legal potential in fact have *higher* scores than many, perhaps the majority, of the attorneys now practicing, serving as judges, making up bar admission rules, and perhaps even sitting on law school admission committees. If one truly believes that the LSAT is in fact a predictor of legal performance (as one must to justify its use), how can this state of affairs, where the purportedly *more* able are rejected and the purportedly *less* able are let loose to continue practicing on the populace, be defended?

More pointedly, how can a profession which professes diversity as a basic element of its ultimate goal continue to work against diversity by excluding working-class, black and Chicano applicants who have earned *higher* scores than literally thousands of currently practicing white attorneys? This is not a hypothetical question. In 1961 an applicant scoring above 485 would have been in the top half of his or her class (in terms of LSAT) at 81 percent of law schools. Yet in 1976, 19 percent of the black applicants who scored above 500 did not get admitted to a single accredited law school. If the goal is to maximize performance and the LSAT is the predictor of performance, how can the profession deny today's applicants access to the courtroom to argue against the earlier generation of attorneys who are purportedly—by the LSAT standard—less able than they are?

If one asserts that the LSAT predicts performance and the goal of law schools is to admit the lawyers who will perform best, the current system cannot be rationally defended. Why keep out 500s when thousands of 485s and 425s are already practicing? The rational maximization policy would be to admit the 500s and remove the 485s and 425s from practice. Under the current system students are excluded not because their LSAT was deemed too low for competent practice but simply because they happened to apply in the wrong year. If a student with a score too low to be accepted today had applied years ago, or waited until the ratio of applicants to places, and thereby the effective cutoff score, fell in the future, he or she would be admitted. The current practice of sliding the effective admissions cutoff up and down the scale in response to outside demand factors cannot be rationally explained by a desire to maximize standing on the criterion. A rational maximization policy would be to set a high cutoff score and vary the number of students admitted each year. If one year few students scored above the cutoff, few would be admitted to the legal profession. If in another year many scored high many would be admitted. What this would mean in practical terms is admitting the majority of candidates applying to law school today and disbarring a substantial proportion of the currently practicing attorneys due to inferior legal aptitude.

Anyone unwilling to take this step would be indicating that they are not serious about their claim that the LSAT predicts performance and that the goal of the profession is to maximize the level of performance.

Although the social function of the LSAT and the current law school admission process cannot be rationally explained in these terms, there is another explanation of its function which is quite coherent and logically consistent. That is that, whether purposefully or not, the LSAT serves to systematically reserve a disproportionate number of places in the legal profession for the children of society's elite, the number of places reserved for the elite *increasing* each time there is a generally perceived upsurge in the social and economic importance of the law.

Since the LSAT discriminates in such a fashion that at each higher score level the proportion of working-class and minority applicants represented declines, the higher the effective LSAT cutoff set by the institution or the profession as a whole, the smaller the proportion of working-class and minority students—who gain access. Since demand for admission to law school fluctuates yearly so does the cutoff. In any period when the law is perceived as gaining in importance and more applicants seek to enter, the effective LSAT cutoff can be expected to rise, and thereby, the social profile of the entering class can be expected to skew further in the direction of the white elite. This is a systematic effect. Whenever the law is most in demand legal representation is most in demand, presumably.